FILED 12/2/2022
DOCUMENT NO. 11840-2022
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for rate increase by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company - Fort Meade, and Florida Public Utilities Company - Indiantown Division.	DOCKET NO. 20220067-GU FILED: December 2, 2022

POST-HEARING BRIEF OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2022-0222-PCO-GU, issued June 17, 2022, and the First Order Modifying Order Establishing Procedure and Granting in Part and Denying in Part Motion to Modify Key Activity Dates, Order No. PSC-2022-0270-PCO-GU, issued July 8, 2022, and Second Order Revising Order Establishing Procedure and Order Granting in Part and Denying in Part Motion for Extension of Time, Order No. PSC-2022-0323-PCO-GU, issued September 12, 2022, hereby submit this Post-hearing Brief.[1]

STATEMENT OF BASIC POSITION

Florida Public Utility Company (FPUC) seeks to increase its customers' base rates during these challenging economic times marked by high inflation and the real threat of an economic recession. As such, FPUC's request for a midpoint return on equity (ROE) of 11.25% is excessive and should be reduced, as should be FPUC's requested increase in base rates of nearly $24.06 million dollars. TR 1136-1137. FPUC is not entitled to have its rates established on a midpoint ROE greater than 9.25%. TR 770. FPUC has not demonstrated an entitlement to any annual base rate increase, which is significant considering that FPUC's requested increase in base rates was $24.06 million dollars and was based on an excessive ROE of 11.25%. TR 1136-1137.

OPC evaluated and provided testimony on FPUC's Petition, the Minimum Filing Requirements (MFRs), discovery responses and testimonies filed in this proceeding. OPC engaged expert witnesses to conduct this extensive and thorough review and testify in this

[1] Citations to the technical hearing transcript will be shown as "TR" with page(s) references. Citations to the hearing exhibits will be shown as "EX" along with any necessary identifying information. References to the service hearing transcripts will be shown as "SH [location] TR and pages(s).

proceeding: David Garrett - Depreciation and Depreciation Rates, and Cost of Capital issues; and Ralph Smith, C.P.A., Accounting Adjustments and Revenue Requirement. OPC's expert witnesses identified principal areas for adjustments: Depreciation and Depreciation Rates; Capital Structure; Return on Equity; Parent Debt Adjustment, Acquisition Adjustment and other Revenue Adjustments.

Depreciation and Dismantlement

FPUC's Witness Lee proposed depreciation parameters that includes several accounts with underestimated service lives. Adopting OPC witness Garrett's proposed depreciation rates results in an adjustment reducing the Company's proposed annual depreciation accrual by $250,098 when applied to the filed plant and reserve balances. TR 773, 858. Thus, assuming that the Commission adopts OPC witness Garrett's service lives for the depreciation study, the sum of the adjustments results in a reduction to FPUC's 2023 revenue request by $2.073 million for new lower depreciation rates. EX 64.

Return on Equity

David Garrett has evaluated FPUC's requested ROE in light of current market conditions. FPUC's requested 11.25% ROE with its requested 55% equity ratio, is excessive under current market conditions. TR 765-766. Mr. Garrett applied the Discount Cash Flow (DCF) method checked by the Capital Asset Pricing Model (CAPM) method with a proposed capital structure of 48% equity based on FPUC's proxy group, and determined that the appropriate ROE for FPUC is 9.25%. TR 766.

Parent Debt Adjustment and Working Capital

Witness Ralph Smith testified that a parent debt adjustment (PDA) was mandated by Rule 15-14.004, F.A.C. The PDA rule is intended to address the affiliate transaction that arises when tax deductible debt at the parent Chesapeake Utility Corporation (CUC) level is presumed to be invested in the equity of the FPUC subsidiary. Evidence at the hearing related to this issue also revealed a deeper issue with the capital funding mechanism utilized by CUC as it relates to the capital structure, working capital balance and the affiliated transaction embedded in the parent investment in the FPUC equity. These issues will be discussed primarily in a common analysis and argument under Issue 23, with relevant references embedded in the argument on Issues 29, 40 and 68 as appropriate. The evidence related to Issue 23 indicates that the Company has overstated

working capital by $127,894,224 requiring at least an additional $8,304,791 reduction in revenue requirements beyond that initially recommended by witness Smith, assuming the OPC ROE and capital structure adjustments.

Acquisition Adjustment

Witness Smith recommends eliminating the acquisition adjustment lingering from the FPUC merger. As he notes, the Company failed to demonstrate that the acquisition continues to fully meet all five criteria set forth in prior Commission orders. TR 1150. Specifically, Florida's regulatory policies are intended to prevent regulated utilities from intentionally paying more for an acquisition that can be economically justified. TR 1107. In the instant case, the Company failed to meet its on-going burden to demonstrate that the promised economic justification for the acquisition adjustment remained. When adjusted to include all the appropriate O&M costs included in customer rates, total "cost savings" are no more than $2,393,200 which is less than the remaining acquisition amortization of $2,647,134. EX 8. In other words, there is no continuing costs savings for customers.

Other Revenue Adjustments.

FPUC also has the burden of proof in this matter in all respects. Based on witness Smith's review of FPUC MFRs and the extensive discovery, he recommends additional adjustments to FPUC's request. Witness Smith recommends reductions for Director & Officers Liability insurance expense, rate case expense, tax-related costs, incentive compensation costs and other benefits costs, and the disallowance of other costs.

Interim Rates

The OPC submits that the interim increase was improperly based on an adjustment disguised as a rate base reduction that instead improperly increased rate base, as discussed in Issue 23, leading to an interim increase that was unwarranted. Interim rates should be refunded entirely or at least by the amount held subject to refund.

Conclusion

After consideration of the improper rate base increase addressed in Issue 23, the $7.8 million maximum revenue increase originally recognized by OPC witness Smith would need to be offset by $8.3 million related to that issue, actually leading to as much as a $500,000 reduction

in rates. Accordingly, FPUC has not demonstrated that it is entitled to any revenue increase, exclusive of the GRIP revenue requirement transfer into base rates. This means that FPUC's entire increase is excessive.

ISSUES, POSITIONS, AND ARGUMENTS[2]

TEST PERIOD AND FORECASTING

ISSUE 1: Is FPUC's projected test period of the twelve months ending December 31, 2023, appropriate?

OPC: *Yes, although FPUC has the burden of demonstrating that the projected period of twelve months ending December 31, 2023 is appropriate and representative of conditions that will exist when new rates go into effect. The projected test year should reflect all applicable OPC adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the projected period of twelve months ending December 31, 2023 is appropriate. These projected test year should reflect all applicable OPC adjustments.

Chesapeake Utilities Corporation ("CUC") Chief Accounting Officer Galtman testified emphatically that that there are no merger impacts under consideration that would affect the expenses the Commission is approving in this case. He also testified that he would be in the position to know of any such activities, were they to be occurring. TR 180-184. The Commission should accept these representations as an assurance that the test year can be relied upon as being fairly representative of operations for setting fair, just and reasonable rates, consistent with the decision in Order No. PSC-2009-0375-PAA-GU at 39-40, which found that a merger in the near future could make the rates set by the Commission "inappropriate."

---

[2] A Type 2 stipulation occurs on an issue when the utility and staff, or the utility and at least one party adversarial to the utility, agree on the resolution of the issue and the remaining parties (including staff if they do not join in the agreement) do not object to the Commission relying on the agreed language to resolve that issue in a final order.

The OPC position on each Type 2 stipulation stated herein is as follows:

OPC takes no position on these issues nor does it have the burden of proof related to them. As such, the OPC represents that it will not contest or oppose the Commission taking action approving a proposed stipulation between the Company and another party or staff as a final resolution of these issues. No person is authorized to state that the OPC is a participant in, or party to, a stipulation on these issues, either in this docket, in an order of the Commission or in a representation to a Court.

ISSUE 2: Are FPUC's forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, appropriate? If not, what adjustments should be made?

OPC: *Yes, although FPUC has the burden of demonstrating that the forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, is appropriate. The forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, should reflect all applicable OPC adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, is appropriate. The forecasts of customer and therms by rate class for the projected test year ending December 31, 2023, should reflect all applicable OPC adjustments.

ISSUE 3: Are FPUC's estimated revenues from sales of gas by rate class at present rates for the projected test year appropriate? If not, what adjustments should be made?

OPC: *Yes, although FPUC has the burden of demonstrating that the estimated revenues from sales of gas by rate class at present rates for the projected test year is appropriate. The estimated revenues from sales of gas by rate class at present rates for the projected test year should reflect all applicable OPC adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the estimated revenues from sales of gas by rate class at present rates for the projected test year is appropriate. The estimated revenues from sales of gas by rate class at present rates for the projected test year should reflect all applicable OPC adjustments.

QUALITY OF SERVICE

ISSUE 4: Is the quality of service provided by FPUC adequate?

OPC: *FPUC has the burden of demonstrating that quality of service is appropriate. The multiple customer comments filed in the docket urge the Commission not to allow a rate increase at this time due to the extremely challenging times. There were 126 complaints over 5 years, 65% regarding billing and 35% regarding quality of service. Apart from the demonstrable complaints, the quality of service appears otherwise adequate.*

ARGUMENT:

Commission staff Witness Calhoun testified regarding the number of complaint in the Commission's Consumer Activity Tracking System (CATS). TR 934. In her testimony, Witness Calhoun testified that many consumers who have a dispute with the regulated company will reach a resolution without reaching out to the Commission. TR 932. In fact, she acknowledged that consumers are encouraged to allow the regulated company the opportunity to resolve the dispute prior to any Commission involvement. TR 932.

Witness Calhoun reviewed the CATS for the period of July 1, 2017 through June 30, 2023. For FPUC, there were 104 complaints, of which 29 were transferred to the Company. TR 933. Of those, 64% were related to billing and 36% related to quality of service. TR 933. For the FPUC-Indiantown division there were 2 complaints related to quality of service. TR 933. For the Chesapeake division, 19 complaints were logged, 13 related to billing, 5 related quality of service, and 1 was transferred. TR 934. Finally, for the FPUC-Ft. Meade division there was 1 complaint regarding billing. TR 934. In total, there were 126 complaints, of which the majority were for FPUC. TR 938. Approximately 65% of the formal complaints received related to billing and 35% related to quality of service. TR 940.

FPUC's Witness Palmer claimed that based on a starting point of 23 total complaints in 2013 among all four divisions, FPUC consistently reduced their complaints by 35% or better annually. TR 374. She stated that over the past nine years the Company did not receive a formal complaint for the FPUC-Indiantown division and received only one complaint for FPUC-Ft. Meade. TR 374. However, over the 5-year period of 2017 through 2022, there were 126 complaints which does not appear to support the assertion of an annual 35% reduction in complaints for all division since 2013 based on a starting point of 23 complaints. Moreover, there were 2 quality of service complaints found in the CATS for FPUC-Indiantown.

As part of the Service Hearing process, customers are encouraged to share their comments and any additional materials that they would like to provide the Commission for consideration via mail or email with reference to the docket and to be placed in docket. SH West Palm Beach TR 7, and SH Winter Haven TR 7-8. A review of correspondence in the Docket filed from customers appears to show more than 100 individual comments filed in the docket (although the Clerk's Office does not appear to note duplicate filings). The majority of these customer comments filed in the docket urge the Commission not to allow a rate increase at this time due to the extremely challenging times. While witness Calhoun testified that the scope of her testimony was the number

of complaints received by the Commission for FPUC in this docket, there was no Commission staff witness to summarize the customer correspondence filed in this docket. TR 939-940.

In conclusion, FPUC has the burden of demonstrating that quality of service is appropriate. The multiple customer comments filed in the docket urge the Commission not to allow a rate increase at this time due to the extremely challenging times. Moreover, there were 126 complaints over 5 years, 65% regarding billing and 35% regarding quality of service. Apart from the demonstrable complaints, the quality of service appears otherwise adequate.

DEPRECIATION STUDY

ISSUE 5: Based on FPUC's 2023 Depreciation Study, what are the appropriate depreciation parameters (e.g. service life, remaining life, net salvage percentage, and reserve percentage) and resulting depreciation rate for each distribution and general plant account?

OPC: *The Commission should adopt the following service lives: Acct. 378-M&R Equip.- general (46 years); Acct. 3801, M&R Equip. –City Gate (49 years); Services-Plastic (57 years); and Acct. 381, Meters (30 years). EX 57, 62, and 63. Adopting witness Garrett's depreciation rates results in an adjustment reducing the Company's proposes annual depreciation accrual by $250,098 when applied to the filed plant and reserve balances and a reduction to FPUC's 2023 revenue request by $2.073 million for new lower depreciation rates. TR 773, 858, EX 64.*

ARGUMENT:

OPC witness Garrett testified that there are two primary components of depreciation rates that are estimated -- service lives and net salvage. TR 771. Witness Garrett's main disagreement with FPUC's service lives studies were that they did not rely on historical data and use a Florida-only peer group to base service lives on. TR 771. FPUC witness Lee confirmed that the retirement rate for many of the accounts has been less than one percent, making statistical analysis not reliable in life determination. TR 528. The reliance on the Florida-only peer group runs the risk of creating a feedback loop that may not be adequately reflective of objective historical retirement data. TR 771.

Witness Garrett further testified that the legal standard governing depreciation rates requires that the utility make a convincing showing that its proposed depreciation rates are not excessive. TR 771, 782. Witness Garrett testified that if depreciation rates are overestimated (i.e., service lives are underestimated), it encourages economic inefficiency. TR 851. He noted that if a utility is allowed to recover the cost of an asset before the end of its useful life, this could incentivize the utility to unnecessarily replace the asset in order to increase its rate base, which

results in economic waste. TR 851. There is potential economic harm to customers when service lives are underestimated, whereas regulators have tools to ensure the utility is not economically harmed if service lives are overestimated. TR 852. Thus, from a public policy perspective, it is preferable for regulators to ensure that assets are not depreciated before the end of their true useful lives. TR 851.

Since FPUC did not provide historical data, witness Garrett looked at the lives of other Florida utilities and other costal utilities in other jurisdictions. TR 772. Witness Garrett selected his coastal utility group in part because he performed the depreciate analysis for the companies in this group and each included voluminous historical retirement data that was adequate for actuarial analysis. TR 855. Given the lack of historical data in this case, witness Garrett relied on approved service lives of other utilities as a level of an objective indicator of an appropriate service life. TR 854-855. Based on his analysis, he recommends longer service lives for four accounts: Acct. 378-M&R Equip.- general (46 years); Acct. 3801, M&R Equip. –City Gate (49 years); Services-Plastic (57 years); and Acct. 381, Meters (30 years). Witness Garrett testified the approved service lives for these accounts are generally longer than those approved in Florida for the same accounts. TR 855.

On September 9, 2022, FPUC witness Lee revised her direct testimony to correct several errors in her depreciation study. TR 530. She provided some examples where the average ages were not calculated correctly, some vintages were missing and some required adjustments to either the account balance or reserve balance. TR 530-531. Based on FPUC witness Lee's revisions, OPC witness Garrett filed supplemental testimony to update OPC's position based on the revised depreciation parameters. TR 857.

FPUC witness Lee's main criticism of witness Garrett's proposed service lives is his use of data outside of Florida. TR 962-963. However, witness Lee's criticism only demonstrates her biased reliance on Florida-only data. TR 963. Witness Lee blithely attempts a blanket dismissal of witness Garrett inclusion of companies in coastal areas where he has personal knowledge that sufficient historical data was available. TR 964. Yet, she conceded that she has not done any studies or analysis to show that Florida companies operate in harsher conditions than these other companies in other states. TR 529. Thus, the Commission should approve the longer service lives proposed by witness Garrett and eliminated the Florida feedback loop. The Commission should adopt the following service lives: Acct. 378-M&R Equip.- general (46 years); Acct. 3801, M&R Equip. –City Gate (49 years); Services-Plastic (57 years); and Acct. 381, Meters (30 years).

The depreciation parameters and resulting depreciation rates are as shown in OPC witness Garrett's direct and supplemental testimonies and EX 57, 62, and 63, exhibits DJG-22, DJG-S20, and DJG-S21. Adopting OPC witness Garrett's proposed depreciation rates results in an adjustment reducing the Company's proposes annual depreciation accrual by $250,098 when applied to the filed plant and reserve balances. TR 773, 858. Thus, assuming that the Commission adopts OPC witness Garrett's service lives for the depreciation study, the sum of the adjustments results in a reduction to FPUC's 2023 revenue request by $2.073 million for new lower depreciation rates. EX 64.

ISSUE 6: Based on the application of the depreciation parameters that the Commission has deemed appropriate, and a comparison of the theoretical reserves to the book reserves, what, are the resulting imbalances, if any?

OPC: *The depreciation parameters and resulting depreciation rates which incorporate flowing back any imbalances are as shown in OPC witness Garrett's direct and supplemental testimonies and EX 63, exhibit DJG-21*

ARGUMENT:

FPUC witness Lee testified that the difference between the theoretically correct reserve and the book reserve is an imbalance, either a deficit or a surplus. TR 513. Witness Lee testified that the remaining life rate design is self-correcting in that it self-adjust for over or under recovery, as well as for changes in projected life or salvage parameters. TR 513. She noted that a reserve deficit will result in a higher remaining life depreciation rate because there is more that needs to be recovered over the remaining life. TR 513. Conversely, a reserve surplus will cause the remaining life depreciation rate to be less because there is less in the future that needs to be recovered. Witness Lee stated that correction of major imbalances may be considered through reserve allocations or amortization. TR 514. Witness Lee testified that the overall study indicates a reserve surplus of $19.7 million on January 1, 2023, based on the proposed life and net salvage factors. This amount consists of a $20.7 million surplus in the distribution accounts and about $1 million deficit in general plant accounts. TR 514. Witness Lee recommended correcting the calculated reserve imbalances for each distribution and non-amortizable general plant account over the remaining life of the given account. TR 514. She used a 5-year amortization for the reserve imbalance associated with the Commission approved amortized general plant accounts. TR 504. She testified this amortization results in an annual expense increase of $288,819. TR 504.

Witness Garrett recommended longer service lives for four accounts. TR 855. Based on his recommended depreciation rates applying his recommended service lives results in an adjustment reducing the Company's proposed annual depreciation accrual by $250,098 when applied to the filed plant and reserve balances as of the depreciation study revision. TR 773, 858. Witness Garrett incorporated these imbalances into rates and flowed them back over the remaining lives as shown in Exhibit DJG-S21. EX 63. Given that witness Garrett utilized FPUC's depreciation study as the basis of his adjustments, the general plant depreciation rate incorporates the 5-year flow back in the depreciation rates recommended by FPUC witness Lee.

ISSUE 7: What, if any, corrective depreciation reserve measures should be taken with respect to any imbalances identified in Issue 6?

OPC: *Any imbalances identified by adoption of the depreciation parameters and resulting depreciation rates shown in OPC Witness Garrett's direct and supplemental testimonies and exhibits should be corrected for each distribution and non-amortizable general plant account over the remaining life of the given account. TR 514. The general plant account should be amortized over five years given the de minimis amount.*

ARGUMENT:

FPUC witness Lee testified that the difference between the theoretically correct reserve and the book reserve is an imbalance, either a deficit or a surplus. TR 513. Witness Lee testified that the remaining life rate design is self-correcting in that it self-adjust for over or under recovery, as well as for changes in projected life or salvage parameters. TR 513. She noted that a reserve deficit will result in a higher remaining life depreciation rate because there is more that needs to be recovered over the remaining life. TR 513. Conversely, a reserve surplus will cause the remaining life depreciation rate to be less because there is less in the future that needs to be recovered. Witness Lee stated that correction of major imbalances may be considered through reserve allocations or amortization. TR 514. Witness Lee testified that the overall study indicates a reserve surplus of $19.7 million on January 1, 2023, based on the proposed life and net salvage factors. This amount consists of a $20.7 million surplus in the distribution accounts and about $1 million deficit in general plant accounts. TR 514. Witness Lee recommended correcting the calculated reserve imbalances for each distribution and non-amortizable general plant account over the remaining life of the given account. TR 514. She used a 5-year amortization for the reserve imbalance associated with the Commission approved amortized general plant accounts. TR 504. She testified this amortization results in an annual expense increase of $288,819. TR 504.

Witness Garrett recommended longer service lives for four accounts. TR 855. Based on his recommended depreciation rates applying his recommended service lives results in an adjustment reducing the Company's proposed annual depreciation accrual by $250,098 when applied to the filed plant and reserve balances as of the depreciation study revision. TR 773, 858. Witness Garrett incorporated the imbalances incorporated into rates and flowed back over the remaining lives as showed in Exhibit DJG-S21. EX 63. Given that witness Garrett utilized FPUC's depreciation study as the basis of his adjustments, the general plant depreciation rate incorporates the 5-year flow back in the depreciation rates recommended by FPUC witness Lee. Given the general plant deficiency amount is de minimis the 5 -year amortization was not contested by witness Garrett.

ISSUE 8: What should be the implementation date for revised depreciation rates, and amortization schedules?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

RATE BASE

ISSUE 9: Has FPUC made the appropriate adjustments to reflect GRIP investments as of December 31, 2022, in rate base?

OPC: *FPUC will have outstanding GRIP costs as of December 31, 2022, subject to true-up in 2023 factors. The GRIP revenue requirement that is being transferred to base rates is $19,755,931.*

ARGUMENT:

FPUC is proposing to move its investments in its Gas Reliability Infrastructure Program (GRIP) into rate base and reset the GRIP surcharge to zero. TR 1136. The required GRIP was implemented to meet federal safety requirements, thus significant infrastructure has been replaced and recorded as plant in service. TR 1150.

FPUC witness Cassel argues that the Company was not "required" to develop and implement a GRIP program. TR 1088. He contends that FPUC as a standalone company may have eventually made the facility replacement necessary, but it would not have done so on an expedited basis. TR 1088. However, the federal legislation that required a plan to replace aging infrastructure was enacted in 2011 after the merger and was relied on by the Companies to approve their GRIPs. Order No. PSC-2012-0490-TFT-GU, issued September 24, 2012, in Docket No. 20120036, <u>In re: Joint Petition for Approval of Gas Reliability Infrastructure Program (GRIP) by</u>

Florida Public Utilities Company and the Florida Division of Chesapeake Utilities Corporation, at pp. 1-2. Additionally, FPUC already had a bare steel replacement and recovery program approved in its 2004 rate case modified to also include steel tubing in the 2008 rate case that was amortized over a 50 year period. *Id.* at pp. 2-3. The current GRIP program was requested to be implemented over a 10 year replacement period. *Id.* at 3. Thus, the currently approved GRIP program is ending.

FPUC witness Cassel stated that all GRIP projects should be completed by the end of 2022. TR 28. However, he stated that there is a half mile of main that is caught up in permitting issues in West Palm Beach and is very likely to run over the 2022 timeframe. TR 28. Thus, FPUC will have outstanding GRIP costs as of December 31, 2022, subject to true-up in 2023 factors. The GRIP surcharge revenue that is being transferred to base rates is $19,755,931. TR 1136, EX 64.

ISSUE 10: Is FPUC's adjustment to move existing Area Extension Program (AEP) projects into rate base appropriate? If so, what additional adjustments, if any, should be made?

OPC: *FPUC's Accumulated Depreciation related to the AEP shall be increased by $85,698.*

ARGUMENT:

Stipulated Issue.

ISSUE 11: What is the appropriate amount of existing environmental costs, if any, that should be removed from rate base and recovered through the Company's proposed environmental cost recovery surcharge mechanism?

OPC: *The existing environmental costs should be recovered in base rates, not through a surcharge. There is no rationale for changing long standing Commission practice of recovery in base rates. These costs are generally known and relatively stable. $456,348 was subtracted on Exhibit RCS-2R. Schedule C-1, page 1 of 5, line 13, based on the Company's proposal. To reflect recovery in base rates, the $456,348 needs to be added back to 2023 test year operating expense.*

ARGUMENT:

FPUC witness Cassel testified to the Company's proposal to remove all existing environmental costs from rate base and base rates and apply them as a surcharge similar to what Chesapeake division had done historically. TR 38. He stated the surcharge recovery costs are associated with the on-going remediation requirements of the few remaining manufactured gas plant remediation sites. TR 42. Currently, FPUC has one site in active remediation and two other

sites in monitoring status. TR 58. The Company anticipates the remediation to continue for the next 5 to 15 years for an approximate cost of $7.5 million to $13.9 million. TR 60.

The Commission approved Chesapeake's environmental "surcharge" as temporary for four years extend for an additional 20 months which has been subsequently terminated. TR 57, 58, and 120. Chesapeake over collected $313,430 through the surcharge and that amount was established as a regulatory liability to be used for remediation and addressed in a future rate case. TR 57. Neither, FPUC-Indiantown or FPUC-Ft. Meade have environmental remediation requirements, thus did not require any recovery. TR 57. FPUC division recovered $3.6 million through base rates for environmental remediation. TR 57, 60. The Company removed the $3.6 million recovery from base rates and was proposing to recover $627,995 annually, January 1, 2023, through a surcharge. TR 58, 60.

The only cases that FPUC cites in testimony for this proposal to establish a surcharge is storm surcharges established as result of settlements. TR 61, 62. Even the temporary surcharge established for Chesapeake was predicated upon the relatively short term recovery period of four years. TR 120. However, the current environmental costs are on-going and predictable. The minimal estimated recovery period is 5 years; however, it is more likely that some costs will be on-going up to 15 years. The Company proposed to establish recovery at $627,995 annually. While this recovery request amount is not in dispute, the mechanism is in dispute. There is no rationale for moving to a surcharge as opposed to the Commission's long standing practice of recovery in base rates. These costs are generally known and relatively stable. Thus, the $456,348 should be recovered in base rates.

ISSUE 12: Is FPUC's proposed Safety Town project reasonable? If so, what is the appropriate amount for plant-in-service for the project?

OPC: *FPUC has the burden of demonstrating that its proposed Safety Town project costs are reasonable, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.*

ARGUMENT:

FPUC has the burden of demonstrating that its proposed Safety Town project costs are reasonable, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.

ISSUE 13: Do FPUC's adjustments to Florida Common and Corporate Common plant and accumulated depreciation allocated appropriately reflect allocations among

FPUC's gas division, FPUC's electric division, and non-regulated operations? If not, what additional adjustments, if any, should be made?

OPC: *FPUC has the burden of demonstrating that it's Florida Common and Corporate Common plant and accumulated depreciation costs are allocated appropriately, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.*

ARGUMENT:

FPUC has the burden of demonstrating that it's Florida Common and Corporate Common plant and accumulated depreciation costs are allocated appropriately, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.

ISSUE 14: Has FPUC made the appropriate adjustments to remove all non-utility activities from Plant in Service, Accumulated Depreciation, and Working Capital?

OPC: *FPUC has the burden of demonstrating that all non-utility activities from Plant in Service, Accumulated Depreciation, and Working Capital have been appropriately removed, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.*

ARGUMENT:

FPUC has the burden of demonstrating that all non-utility activities from Plant in Service, Accumulated Depreciation, and Working Capital have been appropriately removed, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.

ISSUE 15: What is the appropriate level of Miscellaneous Intangible Plant for the projected test year?

OPC: *FPUC shall continue amortizing balances related to rights granted for Wayside and Deland South natural gas stations until fully amortized and a true-up amortization entry shall lower FPUC's projected average rate base by $85,839. (Stipulated)*

ARGUMENT:

Stipulated Issue.

ISSUE 16: What is the appropriate level of plant in service for the projected test year? (Fallout Issue)

OPC: *The appropriate level of plant in service for the projected test year should reflect all OPC adjustments resulting in a balance of $553,168,574.*

ARGUMENT:

The appropriate level of plant in service for the projected test year should reflect all OPC adjustments resulting in a balance of $553,168,574.

ISSUE 17: What is the appropriate level of accumulated depreciation for the projected test year? (Fallout issue)

OPC: *The appropriate level of accumulated depreciation for the projected test year should reflect all OPC adjustments. These adjustments result in the following balances for the accumulated depreciation accounts: Utility Plant: ($134,208,281), Common Plant: ($2,966,035) and Acquisition Adjustment: ($1,541,698).*

ARGUMENT:

The appropriate level of accumulated depreciation for the projected test year should reflect all OPC adjustments. These adjustments result in the following balances for the accumulated depreciation accounts: Utility Plant: ($134,208,281), Common Plant: ($2,966,035) and Acquisition Adjustment: ($1,541,698).

ISSUE 18: Should any adjustments be made to the amounts included in the projected test year for acquisition adjustment and accumulated amortization of acquisition adjustment?

OPC: *Yes, there should be an adjustment. The FPUC acquisition adjustment should not be included in rate base, and the related amortization expense should not be allowed to be included in 2023 test year operating expenses. The Commission should disallow ($34,192,493) resulting in an adjusted balance of $2,009,576.*

ARGUMENT:

OPC witness Smith testified that the Commission allowed Chesapeake Utilities Corporation (CUC) to record a $34,192,493 purchase price premium related to the acquisition of FPUC as a positive acquisition adjustment to be amortized over a 30-year period beginning in November 2009. TR 1146. He noted that FPUC included the $34,192,493 acquisition adjustment (net of accumulated amortization in its projected 2023 test year average rate base). TR 1146. Several FPUC witnesses, Cassel, Napier, and Deason, address whether the Commission should continue to allow the positive acquisition adjustment. TR 1146.

As witness Smith testified, in Order No. PSC-2012-0010-PAA-GU at page 17, the Commission ordered that the level of the cost saving supporting CUC's request will be subject to review in FPUC's next rate case. The Commission further stated that if it is determined that the

cost saving no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by the Commission. TR 1147.

FPUC's witness Napier summarizes the Company's request to continue to retain and recover the unamortized acquisition adjustment over the remaining approved period of time, and remove the requirement to re-evaluate cost savings in order to keep the acquisition adjustment. TR 219. Witness Napier created an exhibit, EX 8 that purported to show net cost savings of $4,462,872 for FPUC. TR 220. However a closer analysis of EX 8 shows that these cost savings are neither acquisition-related nor an apples to apples comparison. For example, witness Napier included cost savings for fuel, but could not answer if those savings are largely due to market fluctuations. TR 257-258. Moreover, she included all 2009 O&M expenses except pension costs and rate case expense, but removed over 10 O&M expense items included in the 2023 projected test year and added in only one O&M expense item. EX 8. If these removed O&M expenses that will be recovered from customers are added back into the analysis, the O&M "cost savings" are reduced by $4.367 million to $1,030,371. When adjusted to include all the appropriate O&M costs included in customer rates, total "cost savings" are $2,393,200 which is less than the remaining acquisition amortization of $2,647,134. EX 8. In other words, there is no continuing costs savings for customers.

Witness Smith testified that FPUC's other witnesses, Cassel and Deason, attempt to show they are relying on the five factors discussed in Order No. PSC-2012-0010-PAA-GU to keep the acquisition adjustment. TR 1149. Those five factors include: (1) increase in quality of service; (2) lower operating costs; (3) increased ability to attract capital from improvements; (4) lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical and operational resources. TR 1149. As witness Smith notes, the Company failed to demonstrate that the acquisition fully meets all five criteria. TR 1150.

FPUC witness Cassel points to improved level of professionalism and improved access to capital. TR 1085. He asserts that there were a number of system improvements as discussed by other FPUC witnesses, that would not have been made or would have been significantly delayed but for the merger. TR 1087. He attributes this to FPUC being a "mom and pop" operation prior to the acquisition. TR 1087. Witness Smith testified that as to be expected, normal improvements were made subsequent to the merger that involve investments in utility plant that are included in rate base and allowed to earn a return for the Company. TR 1150. He stated that there is nothing special or extraordinary about this, or that these investments were made as a consequence of the

merger as opposed to other business reasons. TR 1150. Witness Smith cites the GRIP program as an example because it was implemented to meet federal safety requirements, although witness Cassel contends that the GRIP program was not "required" and would not have been done on an expedited basis under prior management. TR 1080, 1150. However, the federal legislation that required a plan to replace aging infrastructure was enacted in 2011 after the merger and was relied on by the Companies to approve their GRIPs. Order No. PSC-2012-0490-TFT-GU, issued September 24, 2012, in Docket No. 20120036, <u>In re: Joint Petition for Approval of Gas Reliability Infrastructure Program (GRIP) by Florida Public Utilities Company and the Florida Division of Chesapeake Utilities Corporation</u>, at pp. 1-2. Additionally, FPUC had a bare steel replacement and recovery program approved in its 2004 rate case modified to also include steel tubing in the 2008 rate case amortized over a 50 year period. *Id.* at pp. 2-3.

Witness Cassel argues that witness Smith ignored the "cost savings" testimony. TR 1089. However, witness Smith addressed in his testimony the economic impacts of the acquisition adjustment on ratepayers. Witness Smith testified it is not clear whether any substantial operational economies have been achieved through the acquisition that can be attributed to CUC's ownership of the FPUC gas distribution utility. TR 1152. Moreover, witness Smith testified that the large rate increases being sought in the current rate case are indicators that customers would be adversely impacted if the acquisition adjustment is allowed to be included in rate base. TR 1151.

FPUC witness Deason asserted that Florida's regulatory policies prevent regulated utilities from intentionally paying more for an acquisition that can be economically justified. TR 1107. However, witness Deason inappropriately interjects a public interest standard as the ultimate test when the Commission's policy is to look to the five factors (which he acknowledges). TR 1107. Witness Deason also inappropriately attempts to place the burden of proof on customers to show a material change warrants that the acquisition adjustment is no longer in the public interest, contrary to his admonishment that witnesses should not opine on whether a burden has been met. TR 1107-1109. Then witness Deason argues that a rate increase after 12 years is not a basis for finding the acquisition adjustment is not in the public interest because of extraneous factors, yet this ignores the long-standing burden the Company has to demonstrate continuing economic "cost savings," TR 1108.

As witness Smith testified, employees have been added and the cost to provide service have increased significantly, as demonstrated when all O&M costs are added back into the 2023

projected test year. TR 1152, EX 8. These factors show that there is no on-going economic justification to allow the acquisition adjustment. As witness Smith testified, ratepayers should not be required to pay higher rates attributable to an acquisition premium paid to acquire other systems. TR 1152. CUC's acquisition of the FPUC gas distribution utility system does not continue to meet all five standards set forth above; therefore, the Company should not be allowed to recovery its requested premium for the acquisition. TR 1152. The FPUC acquisition adjustment should not be included in rate base, and the related amortization expense should not be allowed to be included in 2023 test year operating expenses. The Commission should disallow ($34,192,493) of the acquisition adjustment resulting in an adjusted balance of $2,009,576.

ISSUE 19: What is the appropriate level of Construction Work in Progress (CWIP) to include in the projected test year?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 20: Have under recoveries and over recoveries related to the Purchased Gas Adjustment and Energy Conservation Cost Recovery been appropriately reflected in the Working Capital Allowance?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 21: Should an adjustment be made to remove unamortized rate case expense from working capital?

OPC: *Yes, an adjustment should be made. The unamortized rate case expense should be adjusted $158,169 by to remove to correct for error, and by $1,713,787 to remove FPUC's updated remaining amount for the unamortized balance of rate case expense from the working capital, thereby reducing rate base by $1,871,956.*

ARGUMENT:

OPC witness Smith testified that FPUC is requesting an estimated rate case expense totaling $3,427,527 million which they are asking to amortize over a five-year period. TR 71, 1142. This would result in $685,515 being included in the projected 2023 test year rate case expense amortization. TR 71, 1142. However, the Company also included one-half of the $3,427,574 of rate case expense in the working capital component of its projected 2023 test year rate base. TR 1142. In response to discovery, FPUC clarified that in its original MFR filing they included $1,871,956 (one-half $3,743,911) which was later corrected to $1,713,787 (one-half the corrected amount of $3,427,574). These corrections result in an additional expense reduction of

$158,169 due to the difference between the original and corrected amounts ($1,871,956-$1,713,787) to correct for this error. TR 1143. FPUC witness Napier stated that the Deferred Rate Case amount in working capital has been reduced by half of the unamortized rate case expense balance, which she claimed was consistent with Commission direction in prior rate proceedings. TR 205. However, she did not cite to any prior rate proceedings in her direct testimony. TR 205. As witness Smith noted, the Company failed to provide any justification for overturning a long-standing Commission policy. TR 1145.

Witness Smith testified that the Commission has a long-standing policy in electric and gas rate cases of excluding unamortized rate case expense from working capital. TR 1143. The rationale noted in the prior Commission case cited by witness Smith was that ratepayers and shareholders should share the cost of a rate case (i.e., the cost of the rate case would be included in the O&M expenses, but the unamortized portion would be removed from working capital). This rationale is based on the belief that customers should not be required to pay a return on funds expended to increase their rates. See, Progress Energy Florida, Inc., Order No. PSC-2010-0131-FOF-EI, issued March 5, 2010, in Dockets Nos. 20090079-EI, 20090144-EI, and 20090145-EI, at pp. 71. In the footnote of this order, the Commission also cited to multiple prior orders where the Commission excluded one-half of the unamortized rate case expense from working capital.[3] Witness Smith also reference a 2010 Florida Power & Light Order No. PSC-20100153-FOF-EI, issued March 17, 2010, in Docket No. 20080677-EI at p. 144 and a Gulf Power Company Order No. PSC-20120179-FOF-EI, issued April 3, 2012, in Docket No. 20110138-EI at pp. 30-31, for the same long-standing Commission practice and policy of excluding unamortized rate case expense from working capital. TR 1144. Moreover, in the Progress Order No. PSC-20100131-FOF-EI at page 71, the Commission noted that the difference between water and wastewater cases which include unamortized rate case expense in working capital and the exclusion in electric and gas case is based on a statutory difference. In water and wastewater cases, the rates are reduced after the amortization period, whereas in electric and gas case, rates are not reduced by the rate case amortization expense after the amortization period ends. *Id.* at p. 71. Subsequent to these orders, Section 367.081(9), Florida Statutes ("Fla. Stat."), was added which states "[a] utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance

[3] Order No. 23573, issued October 3, 1990, in Docket No. 891345-EI, <u>In re: Application of Gulf Power Company for a rate increase</u>; Order No. PSC-20090283-FOF-EI, issued April 30, 2009, in Docket No. 20080317-EI, <u>In re: Petition for rate increase by Tampa Electric Company</u>; Order No. PSC-2009-0375-PAA-GU, issued May 27, 2009, in Docket No. 20080366-GU, <u>In re: Petition for rate increase by Florida Public Utilities Company</u>.

of rate case expense shall be excluded in calculating the utility's rate base." FPUC is a natural gas company with a rate case under Chapter 366, Fla. Stat., which does not require reduction in rates for rate case expense after the amortization period. Even in water and wastewater cases, the Legislature has recognized that the unamortized balance of rate case expense must be excluded from working capital.

Thus, based on the long-standing Commission policy in gas cases, the Commission should disallow the inclusion of one-half the unamortized rate case expense in working capital. The unamortized rate case expense should be adjusted to remove $158,169 to correct for the error, and $1,713,787 to remove FPUC's updated remaining amount of the unamortized balance of rate case expense from the working capital, thereby reducing rate base by $1,871,956.

ISSUE 22: Should an adjustment be made to remove a portion of prepaid Directors and Officers ("D&O") Liability Insurance from working capital?

OPC: *Yes, an adjustment should be made. Due the nature of D&O Liability Insurance protecting shareholders from harmful Board of Director decisions, one half of D&O Liability Insurance in the amount of $85,528, should be removed from working capital (sharing costs between shareholders and ratepayers) which reduces projected 2023 test year rate base by $18,049.*

ARGUMENT:

Witness Smith recommends adjusting the D&O liability insurance expense by half. TR 1164. He testified that D&O liability insurance protects the shareholders from the decisions they made when they hired the Board of Directors and that Board of Directors in turn hired the executive officers of the Company. TR 1165. Witness Smith asserts that there is no question that D&O liability insurance is primarily for the benefit of the shareholders and as such the shareholders should be responsible for at least some of the costs. TR 1165.

Witness Smith acknowledges that some argue that D&O is a necessary business expense which protects ratepayers. TR 1165. In fact, FPUC witness Russell makes the argument that without D&O insurance, the Company's assets are at risk and a D&O policy mitigates this risk by covering legal fees and other costs associated with such suits. TR 985. He also claims that some employees and directors would refuse to accept a position in a company that does not have a D&O policy and refuses to purchase one. TR 985. Since FPUC has a D&O policy, the potential for not being able to attract employees and directors is moot.

Witness Russell acknowledges that D&O insurance provides benefits to shareholders, he claims that it also provides coverage for lawsuits brought by other parties, including employees,

customers, creditors, vendors, competitors, and regulators. TR 985. However, as witness Smith testified, the primary purpose of D&O insurance is the protection of shareholders from the imprudent decisions of the Board and the officers of the Company, which would be the subject of lawsuits brought *by shareholders* against the officers and directors. TR 1166. He states that the benefits of this insurance clearly inures primarily to shareholders; some of whom generally are the parties initiating any suit against the directors and officers. TR 1166.

Witness Smith notes that unlike an unregulated entity, criteria exists for recovery of costs, such as prudence and benefit. TR 1166. He further testified he would be recommending either complete disallowance or at the very least equal sharing of D&O policy costs because the benefits of D&O insurance is primarily for the shareholders' benefit. TR 1166. However, witness Smith acknowledges that this issue has been addressed in prior cases where the Commission allowed electric companies to place one-half the cost of the D&O liability insurance in test year expenses and working capital.[4] Thus, due the nature of D&O Liability Insurance protecting shareholders from harmful Board of Director decisions, one half of D&O Liability Insurance in the amount of $85,528, should be removed from working capital (sharing costs between shareholders and ratepayers) which reduces projected 2023 test year rate base by $18,049.

<u>ISSUE 23:</u> What is the appropriate level of working capital for the projected test year?

OPC: *The appropriate level of working capital for the projected test year should reflect all OPC adjustments. The appropriate amount of working capital is $(128,318,270) based on adjusting FPUC's proposed amount of $(469,046) for the Working Capital Allowance under the Balance Sheet Method by the Accounts Payable to Associated Companies amount of $(127,849,224).*

<u>ARGUMENT:</u>

Issues 23, 29 40 and 68 are all affected to some degree by the need to determine the proper application of the Parent Debt Rule, 25-14.004, Florida Administrative Code (F.A.C.), ("PDA rule"), discussed in detail under Issue 40. The analysis required to apply that rule to this case exposes some fundamental problems with the disconnect between the way CUC *operates* the Florida companies and the way the Company operations are reported for regulatory purposes relative to the way it seeks to have rates set. The OPC submits that no utility should be authorized to set rates that are based on a set of fictitious conditions that will not be in place over the period

[4] See, Order No. PSC-2012-0179-FOF-EI, issued April 3, 2012, Docket No. 20110138-EI, <u>In re: Petition for increase by Gulf Power Company</u>, at p. 101. 4 See, Order No. PSC-20100131-FOF-EI, issued March 5, 2010, in Docket No. 20090079-EI, <u>In re: Petition for increase in rates by Progress Energy Florida, Inc.</u> at p. 99.

when rates are in effect and earnings monitoring is occurring by the regulator. The OPC has chosen to primarily discuss the interrelatedness of these issues under Issue 23. Since the PDA rule exposed the incongruity of the way the Florida companies are actually operated and the fictitious ratemaking basis offered up by CUC, some discussion of the rule is in order.

The most intriguing issue raised by FPUC's effort to fight a $680,000 revenue requirement adjustment is that it shined a bright light on the actual financing of CUC Florida companies and a highly questionable adjustment to working capital that is hiding in plain sight. This adjustment increases rate base and at best is mislabeled and at worst distorts the financial statements presented for ratemaking purposes.

As noted in the Issue 40 discussion, FPUC proposes a synthetic capital structure that involves engrafting debt onto the Florida Company books and supplementing the booked retained earnings balances with constructive assignments of equity dollars. It appears that one benefit to CUC for allocating the mythical capital structure it proposed masks how the Company is actually financed through the use of an intercompany payables and receivables mechanism. This device actually represents the way CUC operates FPUC.

Central to this discussion is a $128 million adjustment to increase rate base. The evidence in this case demonstrates that CUC utilizes an accounts payable and receivable process to fund operations within FPUC. TR 238-239; 1008-1009; EX 117. Accounts 146 and 234 in the FERC Uniform System of Accounts (USOA) are entitled "Accounts Receivable Associate Companies" and Accounts Payable Associated Companies," respectfully. A positive balance in Account 146 represents a debit or asset on the balance sheet and a positive balance in Account 239 represents a credit or liability on the balance sheet. The balances in each of these accounts are considered "current"[5] as opposed to long-term assets and liabilities and they are recorded this way on the books of FPUC and reflected as such in the Annual Report filed with the Commission. EX 119. These documents are filed with a sworn attestation that each report is "a correct statement of the business and affairs" of the companies "in respect to each and every matter set forth therein" for the given year. See, EX 119, pp. 3,8,12, and 17.

In the current rate case the Company purports to have made a consistent adjustment in the interim and permanent MFRs by removing an actual balance of $122, 658,697 and a projected balance of $127,849,224 for what it styled as the "Receivable from Associated Companies" from

[5] Despite their current nature, the net receivables have persisted in the large credit balance and are even projected in 2022 and 2023 to grow beyond the 2021 actual balance. EX 117, Responses to Interrogatory Nos. 159a and 159g.

working capital. As will be discussed *infra*, the OPC will refer to this adjustment as the "Affiliated Payables Adjustment." On redirect, FPUC witness Napier effectively responded yes to the question "[w]as that adjustment made consistent with prior cases and as directed by the PSC?"[6] TR 271. She provided no additional support for the statement or referenced any authority for it. The three prior cases cited in the footnotes by witness Cassel do not expressly discuss such an adjustment or the Commission's direction to make one. TR 47. Additionally, there is no evidence provided by the Company regarding whether the balance purported removed in prior cases was a net receivable that was consistent with the Commission policy contained in the *Tampa Electric* precedent (discussed below). There is no evidence elsewhere in the precedential record demonstrating that the Commission ordered that the balance in Account 146 be removed from the determination of working capital. It is not known if in any prior Commission decision relating to the Company, whether there was an offsetting removal of the payable to associated companies in any such case or if the associated payable and receivable balances were netted in any debit receivable balance that was removed. In any event the FPUC companies' receivable balances in Account 146 have, since 2019, been $-0-. Since 2019, the Company has been netting the receivables against the payables, resulting in a net credit balance between the two accounts. EX 117, Response to Interrogatory Nos.159a and 159g.

Here, FPUC made an adjustment in the permanent case to "[e]liminate receivable from associated companies" in the amount of a *credit* balance of $127,849,224. TR 236-237; EX 123 (MFR G-1 (Consolidated), page 4a).[7] By "eliminating" what is actually a credit balance from working capital, the Company increased working capital and thus rate base by the same $127,849,224. Whether by design or not, this accounting presentation was misleading and masked the true nature of the transactions reflected on the MFRs submitted for ratemaking. Nothing was being eliminated or removed from rate base. Ratebase was being increased dramatically. Unlike the unknown previous case where a receivable/debit was removed and rate base decreased, customers will pay approximately an extra $8-10 million annually because of this enormous increase in rate base.

Similarly, current interim rates revenue requirement were increased by $12,0568,569.01 based on a similar rate base increase of $122,658,297 to "[e]liminate receivable from associated

---

[6] Her full response was "That is correct. We do make those adjustments according to that."

[7] In an asset account, debits are shown in (parentheses) and credit balances are reflected without them. The balance at issue was shown without parentheses. TR163.

companies." TR 250. This single, mischaracterized adjustment created a revenue requirement greater than the overall consolidated, requested interim revenue increase of $7,129,255.[8] TR 43, 250; EX 123, MFR F-3 (Consolidated), Bates Nos. 1449/1456. The actual interim increase authorized by the Commission for the four companies combined was $7,680,264. Order No. PSC-2022-0308-PCO-GU. In any event the questionable increase to the working capital component of rate base exceeds the requested and granted interim request. This OPC proposed response to this impact is addressed further in Issue 68.

What is troubling about the adjustment FPUC proposes, is that the responsible Company witness neither seemed to fully understand the nature of it (and why it was made), nor could explain the mechanics of how a payable could be transformed into a receivable. TR 234-240. More importantly the presentation in the MFRs has the appearance of a purposeful sleight-of-hand inasmuch as the 2021 annual reports filed with the Commission dated April 27, 2022 show that there are $-0- balances for each of the four Florida companies in the Account 146 portion of the balance sheet. TR 244-248; EX 119, pp. 4, 9, 13 and 18. Account 234 which is the liability account balance that *reduces* working capital, and thus rate base, shows a combined year-end balance of $148,320,300 for the four companies in those same annual reports of the companies' books and records. What is unexplained is how these clearly overwhelmingly payable/liability balances booked on the right hand side of the balance sheet were converted in to a negative (or contra) receivable on the left hand side for MFR purposes so they could then be removed in some sort of unnatural accounting presentation. How did they get there? The FPUC witness responsible for making and presenting the adjustment did not understand the reasons for it and could not explain it.

There is precedent by the Commission for including the net of the two accounts (146 and 234) in working capital. In 2009, the Commission rejected a proposal to only eliminate the debit (Account 146) balance from working capital and instead found it to be even handed ratemaking to include the net of the two accounts in working capital, noting that it benefited customers and reduced working capital and rate base. See, *In re: Petition for rate increase by Tampa Electric Company,* Docket No. 20080317-EI; Order No. PSC-2009-0283-FOF-EI, issued April 30, 2009.

In *Tampa Electric*, when the OPC advocated eliminating only the debit balance or Account 146 from working capital based on a burden of proof argument, the Commission rejected that

---

[8] Order No. PSC-2022-0308-PCO-GU states that the consolidated requests were $7,199,532, a relatively immaterial difference of approximately $ 70,277.

suggestion and, in relevant part, addressed the issue by netting the regulated portions of the two account balances as described below.

> Under the USOA, Account 146, Accounts Receivable from Associated Companies, should include amounts due from associated companies within one year. TECO has included $ 6,309,000 in working capital for this account.
>
> ***
>
> TECO included $ 390,000 (jurisdictional) in receivables from non-utility activities. Witness Chronister admitted that the $390,000 was inadvertently included in the total. It is our policy to remove non-utility accounts receivables from the working capital allowance. Thus, working capital shall be reduced by $ 390,000.
>
> ***
>
> The Company included intercompany payables, Account 234 in the amount of $ 7,848,000 (jurisdictional), in working capital. This amount more than offsets the intercompany receivables of $6,309,000. The net result is a decrease to working capital. This is to the ratepayers' benefit. While OPC proposed removing the receivables, there is no proposal to remove the intercompany payables. ***We find that it is important to be even-handed in making adjustments.*** Thus, it would be inappropriate to remove the receivables without removing the offsetting payables.
>
> Therefore, we find that it is appropriate to include the receivables along with the offsetting payables in this case, except for the non-utility portion noted above. Accordingly, Account 146 shall be reduced by $ 390,000 (jurisdictional) for non-utility receivables included in the account.

Emphasis added; footnotes omitted. Order No. PSC-2009-0283-FOF-EI at 20-22. Clearly the Commission policy on this point is based on fairness and providing benefit to customers along the way. For this reason the *Tampa Electric* precedent supports retaining the net payable balance on the balance sheet and in the rate base determination.

So the question arises as to how this precedent applies to this case. There are several aspects that must be considered, related to the proper determination of working capital, the parent debt adjustment and the actual method of capitalization. The working capital issue is discussed below in subpart a. There is a lengthy discussion of the Parent Debt adjustment in subpart b under this issue as it relates to working capital and the Affiliated Payables Adjustment made by the Company.

The equity ratio is tangentially related but is discussed under Issue 40, which makes cross-reference to this discussion as well.

a. Reduction To Working Capital/ Cost Free Source Of Funds Aspect

Based on the *Tampa Electric* precedent, the Commission should reverse the "elimination" of the (contra) "receivable" and reduce working capital or include the balance in capital structure as a zero cost source of funds. Either would have the same revenue requirement effect. This is probably the most straightforward adjustment that is compelled by the complicated method CUC uses to fund the FPUC Company, contrasted with its desire to use an excessive synthetic capital structure. The capital structure treatment is warranted because Hearing Exhibit 119 also reveals that the response to Interrogatory No. 159c indicates that "interest or carrying costs are not charged on any of the Accounts Payable to Associated Company" balances. CUC's Chief Accounting Officer Galtman confirmed this. TR 172,174. This evidence supports recognition that customers should not have to provide a return on the rate base increase caused by removal of this credit balance from determination of rate base.

A reversal of the Company adjustment that removed the liability balance from working capital is supported by the *Tampa Electric* precedent and it recognizes that FPUC did not meet its burden of justifying the manipulation of the accounts and subsequent MFR adjustment of a net liability. The adjustment to revenue requirements is significant for both the interim and the permanent rate setting.

Also as discussed below in Issue 68, since the Company adjustment violates Commission policy in the permanent revenue requirement determination, it should not have been recognized in determining interim rates. Interim revenues should be refunded since the increase was less than the revenue requirement effect of the improper increase to rate base.

For permanent rates, the Company's $127,849,224 adjustment to increase working capital and rate base should be reversed. As shown on the attached Exhibit 1 to this brief, which is based on the record,[9] the revenue requirement should be reduced by an amount within a range of $8,304,791 to $10,502,774 depending on the use of the OPC or FPUC capital structure and ROE.[10]

---

[9] All references to the hearing record are cited in the Notes and Hearing Record Source portion of the Exhibit.

[10] The *Tampa Electric* order removed non-regulated receivables from the net adjustment to working capital. As noted in Mr. Galtman's testimony, there were some non-regulated receivables included in the year-end balance must for FPUC totaling $139,517 and one payable totaling $7,500. TR 163-170; EX 117. The 13-month average balance related to these items is unknown. A conservative (in FPUC's favor) adjustment would be to ignore this net debit balance of $132,017 instead of increasing the OPCs recommended credit adjustment by that amount. It should be noted that the

b. Parent Debt Aspect As It Is Related To The Affiliated Payables Adjustment

In Hearing Exhibit 117 (Responses to OPC's Fifth Set of Interrogatories) in Interrogatory 159a, FPUC explains the relationship of the Accounts Payable to Associated Companies and the capital structure this way:

> Intercompany accounts are shown in the working capital schedule but are excluded from rate base because they are the funding source, along with the direct earnings from division, for the utility's investments and operating costs. As a result, the CUC equity and debt ratios are used in calculating the division's capital structure. Although the accounts receivable/(payable) are shown in the working capital structure, MFR G-1, page 2, line 11, they are removed in the adjustment columns.

Essentially what FPUC is acknowledging here is that the net payable on the FPUC books are the funding source, along with the direct earnings for the utility's investments and operating costs. The notion that they are excluded from rate base ***because*** they are the investment funding source is a *non sequitur*. The fact of the matter is that this mechanism of intercompany net payables is the way that investment is made in the Florida Company. The Company annual reports attest under oath that this is the way the business affairs of the Company are conducted. Utility witnesses testified that the source of the funds for these investments was both debt and equity. TR 174-175; 238-239. Even the purported basis for the "elimination" of the $127,849,224 (permanent) net payable balances was that it was "Equity related." TR 237-238; EX123, MFR G-1 (Consolidated), page 4a. This linkage of the adjustment shown in the MFR explanation to "equity" and the testimony that the source of the funds are both debt and equity supports the presumption that the actual equity investment of CUC in FPUC is supported by debt funds of the parent. Witness Napier testified that the adjustment to increase rate base involved re-spreading these dollar between debt and equity. TR 238-239. Additionally, this exchange occurred between witness Galtman and staff counsel:

> **[Q] Can you explain how accounts payable and receivable work within the context of this rate case?**
>
> A. I can.
>
> So as I was mentioning yesterday in my direct testimony, the -- we participate through to the Chesapeake Utilities

---

entire adjustment of $127,849,224 shown on MFR G-1 (Consolidated), page 4a was represented to be regulated. It is not the OPC's burden to tease out whether there are other non-regulated debits or credits embedded in an adjustment that was questionable in the first instance.

> Corporation. We have a centralized cash management program. And so cash ends up being swept up to the parent each night and goes towards the short-term revolver to pay that off, or if we need more cash, we have borrowings. When we are recording operating expenses ***or capital investment for any of the subsidiaries,*** those amounts are booked onto the financial statements of the respective business. So in this case, you know, with the capital investment into plant that's being made at the FPU companies would increase as a result of those payments. The cash flow that's being generated by FPU is not sufficient to meet all the growth needs and all the investment that takes place. And so the offset to that on the financial statements is a liability.
>
> To the extent that FPU, as its own little stand-alone company, as it invested in that plant and made payments to put plant in the ground, ***the offset would be some funding source, either an equity issuance to a third parties or a debt holder to a third party***
>
> But as we have talked about throughout the case, FPU does not have its own debt structure, and does not have its own equity structure. It's relying on that of the parens [sic]. And so as a result, what you see on the balance sheet is an intercompany balance that's in a liability position that, to answer the question how it relates to the rate case. When we start with our rate base, we have, you can see in the schedules, that there is approximately -- in 2021, there is approximately $425 million of net plant if they are considering depreciation. ***That then -- that plant was funded partially by the intercompany balance.*** And so what we are trying to do is, in our working capital balance, which shows as a large liability, the offset to that was the plant. And so we are eliminating that liability to get to the true rate base that should be considered for rate purposes.

Emphasis added. TR 1008-1009.

In an effort to describe the receivable adjustment (which avoided explaining how the credit balance magically moved from the right side to the left side of the balance sheet), Mr. Galtman provided direct evidence that the true nature of the "Equity related" funding of plant investment was a mix of debt and equity, further undermining any effort to rebut the PDA rule application. Furthermore, while it is clear that the liability was removed (and rate base increased) through the mischaracterized receivable adjustment, there is no evidence in this brief statement that justified it or explained why it is in accord with the *Tampa Electric* Commission policy.

Also, in addition to recognizing a reversal of the Affiliated Payables Adjustment, the appropriate level of working capital for the projected test year should reflect the adjustment to

remove the one-half of unamortized rate case expense. As stated in Issue 21 more fully, the Commission has a long-standing policy of excluding unamortized rate case expense from working capital. TR 1143-1146. The Company did not provide any justification for changing its long-standing policy. TR 1145. The Commission should also remove one half of D&O Liability Insurance in the amount of $85,528, from working capital (sharing costs between shareholders and ratepayers) which reduces projected 2023 test year rate base by $18,049.

ISSUE 24: What is the appropriate level of rate base for the projected test year?

OPC: *The appropriate level of rate base for the projected test year should reflect all OPC adjustments and results in a balance of $435,080,074. If all or part of the Affiliated Payables Adjustment is reversed by the Commission as is recommended in Issue 23, the rate base balance should be adjusted downward accordingly and revenue requirements reduced as shown on Exhibit 1 to this Brief.*

ARGUMENT:

The appropriate level of rate base for the projected test year should reflect all OPC adjustments and results in a balance of $435,080,074. If all or part of the Affiliated Payables Adjustment is reversed by the Commission as is recommended in Issue 23, the rate base balance should be adjusted downward accordingly and revenue requirements reduced as shown on Exhibit 1 to this Brief.

COST OF CAPITAL

ISSUE 25: What is the appropriate amount and cost rate for short-term debt to include in the projected test year capital structure?

OPC: *The appropriate cost rate for short-term debt is 3.28%. The amount and cost rate are shown on EX 64 (Exhibit RCS-2R, Schedule D).*

ARGUMENT:

The appropriate cost rate for short-term debt is 3.28%. The amount and cost rate are shown on Exhibit RCS-2R, Schedule D. EX 64.

ISSUE 26: What is the appropriate amount and cost rate for long-term debt to include in the projected test year capital structure?

OPC: *The appropriate cost rate for long-term debt is 3.48%. The amount and cost rate are shown on EX 64 (Exhibit RCS-2R, Schedule D).*

ARGUMENT:

The appropriate cost rate for long-term debt is 3.48%. The amount and cost rate are shown on Exhibit RCS-2R, Schedule D. EX 64.

ISSUE 27: What is the appropriate amount and cost rate for customer deposits to include in the projected test year capital structure?

OPC: *The appropriate customer deposits amount is $10,312,975 and the appropriate cost rate is 2.37%. The amount and cost rate are shown on EX 64 (Exhibit RCS-2R, Schedule D).*

ARGUMENT:

The appropriate customer deposits amount is $10,312,975 and the appropriate cost rate is 2.37%. The amount and cost rate are shown on Exhibit RCS-2R, Schedule D. EX 64.

ISSUE 28: What is the appropriate amount of accumulated deferred taxes to include in the projected test year capital structure?

OPC: *The appropriate accumulated deferred taxes amount is $40,317,168. The amount and cost rate are shown on Exhibit RCS-2R, Schedule D.*

ARGUMENT:

The appropriate accumulated deferred taxes amount is $40,317,168. The amount and cost rate are shown on EX 64 (Exhibit RCS-2R, Schedule D).

ISSUE 29: What is the appropriate equity ratio to use in the capital structure for ratemaking purposes?

OPC: *The appropriate equity ratio to be used in the capital structure for ratemaking purposes is 48% equity.*

ARGUMENT:

The capital structure refers to the way a company finances its overall operations through external financing. TR 840. The capital structure is made up of debt and equity of which equity requires a higher cost than debt capital because it is a lower priority claimant on the company's assets. TR 840. In a competitive market, a firm has an incentive to minimize its Weighted Cost of Capital (WACC) and maximize its value by increasing its debt ratio to it optimal ratio. TR 842. However, regulated utilities under a rate base rate of return model, where there is no competition,

do not have the same incentive because a higher WACC results in higher rates, all else held constant. TR 843.

Witness Garrett testified that since the proxy group is considered when estimating the cost of equity, it would also be appropriate to consider the financing mix of these companies when assessing a fair ratemaking debt ratio for FPUC. TR 844. FPUC requested a proposed capital structure of 39.4% long-term debt and 55.1% common equity, which equates to a debt-equity ratio of only 0.72. TR 845. The proxy group of utilities used by both FPUC's witness Moul and witness Garrett reported an average ratio of 52% debt and 48% equity with a debt-equity ratio of 1.08. TR 845-846. Witness Garrett looked at nearly 2,000 competitive firms around the country with debt ratios of 50% or greater, with an average debt ratio of 61%. TR 846. He noted that many of these companies with debt ratios higher than 57% include water utilities, wireless telecommunication, power and cable TV. TR 847. Based on his review of the proxy group and other industry capital structures, witness Garrett indicates that FPUC's proposed long-term debt ratio of 39.4% is too low to be considered fair for ratemaking. TR 848. Witness Garrett recommends a long-term debt of 52% and 48% common equity, which adopts the proxy group's debt-equity ratio of 1.08. TR 848.

Witness Moul criticized witness Garrett's use of a hypothetical capital structure rather than the actual capital structure for the test year claiming that it is improper and contrary to Florida practice. TR 1045. However, the 55% equity ratio witness Moul proposes is only an aspirational targeted ratio that has yet to be achieved (i.e. not actual). TR 1078. This was acknowledged by the CUC Assistant Treasurer Russell. TR 320, 324. Russell even acknowledged that the actual CUC equity ratio is 52.2% and that it is within the range authorized by the CUC board of directors. TR 320, 324. He acknowledged that the Commission has no authority over the Board's decision-making. TR 329. The OPC submits that that the Commission has no obligation to curry the favor of the CUC board and what they "strive" to achieve.

The only way witness Moul was able to claim – contrary to Commission policy – that CUC achieved 60% equity was without the inclusion of short-term debt. TR 1078. Witness Moul also claimed that his equity ratio falls within the ranges of his proxy group. TR 1054. The only other utility with an equity ratio above 52% in his proxy group is Atmos Energy Corp., which is supposedly at 60%. TR 1055. This information turned out to be incorrect. Witness Moul's 55% number is artificially inflated by the inclusion of Atmos Energy Corp. At hearing, witness Moul acknowledged that the most recent Atmos equity ratio – calculated on the same basis as used for

the Commission's determination (investor sources only), was 51.9%. TR 1074-1076; EX 128, p. 30. Mr. Moul attempted to interject his notion of capitalized or financial leases into the equation and to suggest that the proper comparator for determining the FPUC equity ratio was Atmos that he believed excluded short-term debt in the calculation. TR 1078-1079. While Atmos appears to simply not have any short-term debt (EX 128 at 38, 58), it is improper to exclude short-term debt in the determination of the equity ratio. CUC witness and Assistant Treasurer Russell confirmed that the then current June 30, 2022 equity ratio for CUC is 52.2% when the equity balance was divided by the sum of the equity, long-term debt ***and short-term debt***. TR 324-325. Witness Moul, on the other hand suggested that CUC was more comparable to Atmos if short-term debt was to be excluded.

This notion is illogical for several reasons. First, the Commission policy is clear that all investor sources are to be included. This even includes preferred stock if issued and outstanding. Second, the policies of Atmos' – primarily doing business in Texas – do not dictate this Commission's policies. TR 1076-1077. EX 128 at page 17. Third, it is clear from the Atmos 2021 10-K that Atmos does make use of short-term debt but just had none outstanding in 2021.[11] Mr. Moul simply has it wrong and his inclusion of Atmos as a comparator in the proxy group grossly overstates the true average of the group. Additionally, there is every indication that the true equity ratio of Atmos is closer to the 52% that is the current CUC equity ratio. The balance sheet that Mr. Moul pointed to for a 61.6% equity ratio is not applicable. TR 1079-1080; EX 128 at 38. A review of that balance sheet indicates that it cannot be relied upon since it misleadingly (relative to the narrow purposes of the Commission's decision) presents $2.4 billion of long-term debt as "current maturities."[12]

---

[11]EX 128 at 58 reveals that the Atmos 2012 10-K has this discussion (combined with an indication on the same page that there were then no borrowings within the short term debt sources):

> ***Short-term Debt***
>
> We utilize short-term debt to provide cost-effective, short-term financing until it can be replaced with a balance of long-term debt and equity financing that achieves the Company's desired capital structure with an equity-to-total-capitalization ratio between 50% and 60%, inclusive of long-term and short-term debt. Our short-term borrowing requirements are driven primarily by construction work in progress and the seasonal nature of the natural gas business.

[12] See EX 128 at 57 showing the 2,400,502,000 of long-term debt as current maturities such that the long-term debt balance on that page of $4,930,205,000 matches the same number on page 38. This is misleading since that "current maturities" figure masks the true balance sheet impact of Winter Storm Uri described on pages 60-61. In a nutshell, Atmos disclosed -- with a high degree of certainty -- plans to investors to securitize approximately $2.2 billion in natural gas procurement costs and use securitization bonds proceeds to repay the public notes used to finance the

When the proxy group is corrected for the right equity ratio for Atmos, the highest equity ratio is 52% with a low equity ratio of 39.5% and an average of 47.4% excluding CUC inflated request. TR 1055. Thus, the appropriate equity ratio that should be used in the capital structure for ratemaking purposes is 48% equity.

An additional consideration for the Commission on this issue is evidence relating to the actual CUC practice of capitalizing the utilities and unregulated operations. Witness Russell represented that all the subsidiaries but one non-regulated one used the same CUC allocated capital structure. TR 335. The Company did not provide evidence that this approach was actually implemented. Witness Cassel dodged the question about the FPUC electric division's equity ratio even though his position would likely entail filing the surveillance report with the Commission. It would have been easy to confirm that the allocation to the electric division was consistent. Even the equity ratios among the Florida gas companies showed some variation. TR 99-101; Ex 115. It would have been instructive for FPUC to have also advised the Commission on regulatory decisions in other jurisdictions. There was no evidence presented that other state Commissions readily acceded to the CUC desired ratios. Any divergence would raise doubts as to the ability of CUC to uniformly allocate debt and equity among the subsidiaries or divisions.

CUC assistant Treasurer Russell testified that at least one entity was capitalized differently than proposed for FPUC. This testimony was not otherwise documented but it did coincide with evidence that an unregulated entity (Marlin) also benefitted from a debt issue that carried the lowest interest rate among all the CUC debt issues. TR 337-338; EX 118, page 28. This is evidence that an unregulated entity like Marlin may be improperly benefitting from a subsidy provided by the regulated subsidiary equity ratio.

The Commission has the institutional knowledge, expertise and experience to decide for itself whether a non-regulated venture is more or less risky than a regulated venture and whether conventional finance theory would indicate that a riskier venture would carry a higher equity ratio as lenders would expect shareholders to carry more of the risk. Chief Accounting officer Galtman indicated that there were more than one non-regulated ventures within the CUC corporation and the June 30, 2022 Form 10-Q also reveals that there are at least three other non-regulated operations. Based on the testimony, all of these entities except Marlin are capitalized the same as

---

incremental gas costs incurred due to Uri. Thus the current maturities will effectively remain on the balance sheet – just under the face amount of a securitized bond. Accordingly, the note on page 30 that includes Atmos' own statement that its 2021 equity ratio is 51.9% is better evidence than Mr. Moul's *ad hoc* 61.6% calculation on the stand or his misguided inclusion of an outdated Atmos equity ratio in the proxy group.

is proposed for FPUC despite having a presumptively different risk profile. Interestingly 41% of the revenue reported for the first six months of 2022 was generated by unregulated operations. TR 334-335; EX 118, page 10. Given the evidence in the case it is imperative that the Florida Public Service Commission assert its authority to independently determine the capitalization based on the relative risks of FPUC based on the Garrett analysis of similarly situated companies as well as the divergence of risk within the CUC operations.

<u>ISSUE 30:</u> What is the appropriate authorized return on equity (ROE) to use in establishing FPUC's projected test year revenue requirement?

OPC: *The appropriate ROE is 9.25%. FPUC's requested 11.25% ROE and 55.1% equity ratio are excessive and extravagant under current market conditions. Awarded ROEs have remained under 10% since before 2015 and the market accounts for flotation costs which are not an out-of-pocket cost. Applying the DCF checked by the CAPM with a proxy group-based 48% equity ratio, the appropriate ROE is 9.25% to gradually bring the ROE in-line with FPUC's market-based cost of equity*

<u>ARGUMENT:</u>

Pursuant to the standards set forth in *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) (Bluefield) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (Hope), the financial integrity of a company should be sufficient to attract capital on reasonable terms under a variety of market and economic conditions. TR 774-776. As is typical with experts and regulators, witness Garrett relied on Discounted Cash Flow (DCF) model and Capital Asset Pricing Model (CAPM) to estimate the cost of equity and weight those results against the results from proxy groups. TR 768. Witness Garrett used the same proxy group chosen by FPUC's witness Moul. TR 757. As part of his analysis, witness Garrett accounted for the effects of the recent inflation which has negatively impacted the entire U.S. markets and disproportionately affected utility customers relative to utility shareholders. TR 768. He accounted for this in the yields on 30-year Treasury bonds (which can fluctuate given the Federal Reserve's response to inflation more directly than the current level of inflation) as a proxy for the risk-free rate in the CAMP. TR 769.

Witness Garrett's results from his use of the DCF with a sustainable growth rate equal to long-term GDP growth projections indicated a cost of equity of 6.7% for FPUC. He also performed an analysis using high, short-term growth rates – even though he finds it unreasonably high -- which resulted in an 8.3% cost of equity. However, FPUC witness Moul's DCF produced an inflated result of 11.65% cost of equity which included a 1.45% "leverage adjustment." TR 809.

Witness Garrett testified that witness Moul's results were primarily overstated because of a fundamental error regarding his growth rate inputs and his leverage adjustment. TR 809. He testified that witness Moul considered growth rates as high as 10.5% for the proxy group which was more than two times the projected annual long-term nominal U.S. GDP growth (a limiting factor). TR 800, 810-811. Witness Garrett also testified that he was not aware of any other witness applying a "leverage adjustment" in the way Mr. Moul proposes without a corresponding increase in the Company's ratemaking debt ratio (i.e. actual leverage). TR 811. He testified that either other ROE witnesses (both utilities and customers) are underestimating ROEs or more likely Mr. Moul is overestimating his cost of equity estimate. TR 811-812.

Witness Garrett also used the CAPM to estimate investor expected return. TR 815. Witness Garrett testified that in his CAPM, he used the long-term U.S. treasury securities for the risk-free rate because this is an estimate of investor's cash flows over long periods of time. TR 816. Short-term rates are subject to greater volatility and thus can lead to unreliable estimates and are rarely used in the CAPM to represent the risk-free rate. TR 816-817. Thus, witness Garrett used the 30-day average of daily Treasury yield curve rates on 30-year Treasury bonds in his risk-free rate estimate, which resulted in a risk-free rate of 3.2%. Witness Garrett used the Value Line Investment Survey to establish the betas. TR 818. He also calculated the equity risk premium (ERP) using three methods: historic average; survey of experts; and calculated implied ERP. TR 818. Based on his analysis, witness Garrett calculated a CAPM for FPUC of 7.9%. TR 824.

Witness Moul's estimated CAPM of 14.41% is an unbelievable overestimation. TR 825. Witness Garrett testified that this overestimation is generated by using overestimated inputs into Mr. Moul's CAPM calculation. TR 825. First, witness Moul used a beta of 1.04 in his CAPM whereas the average beta of his proxy group is 0.83. TR 826. Witness Moul's beta would suggest that FPUC is riskier that the market when, in fact, FPUC and utilities are among the least risky companies in the world. TR 826. Witness Moul also inflated his ERP. He used an input of 10.23% for the ERP which is not realistic. TR 827. Witness Garrett testified that his research showed the highest ERP was only 5.8%. TR 827. On top of this overestimation, Mr. Moul adds a 1.02% to the CAPM on the basis that FPUC is smaller than the proxy group. TR 828. However, witness Garrett noted that a size premium is an outdated concept and not warranted. TR 829-830.

Witness Moul also used firm-specific business risk, comparable earnings and floatation costs to prop up is inflated ROE recommendation. TR 834. Witness Garrett noted that neither DCF nor CAPM models has an input for business risk due to the well-known truth that investors

do not expect a return for such risk. TR 832. Witness Moul's comparable earnings approach resulted in 12.05% for FPUC, though witness Garrett noted there is no marginal value added to the process of estimating non-utility, non-regulated firms beyond the proxy group. TR 834-835. Witness Moul also advocated the addition of 0.17% for floatation costs to his DCF. TR 836. Witness Garrett notes that floatation costs are unnecessary because they are already accounted for in stock pricing and is not an out-of-pocket expense. TR 836-837.

Witness Moul attempts to argue that Witness Garrett's recommended ROE of 9.25% is too low, not related to his analysis and does not account for recent inflation. TR 1047-1048. On one hand, witness Moul points to the recent settlement-based trigger filings of the electric company's which increased mid-point ROEs to 10.10% and 10.20% based on increases in the 30-year Treasury bonds. TR 1047-1048. One the other hand, witness Moul uses a 10-year Treasury note to criticize witness Garrett's use of the 30-day Treasury as the risk-free rate in the CAPM. TR 1051. Under cross-examination, witness Moul acknowledged that he has not done a numeric analysis that shows FPUC could not attract capital or to provide safe and reliable service with a 9.25% equity return. TR 1070. He agreed that a ROE lower than his recommended ROE midpoint of 11.25% could still allow the company to attract capital and provide safe and reliable service. TR 1069.

Although the numerical results from witness Garrett DCF and CAPM models is an average cost of equity of 7.8% based on the Company's proxy group. TR 765. Witness Garrett notes that the legal standard governing the cost of equity does not mandate that the awarded ROE equate to a particular financial model, but rather is reasonable under the circumstances. TR 765. The average awarded gas ROEs have remained lower than 10% since before 2015. TR 779. In witness Garrett's opinion, it is not appropriate to consider an awarded ROE that is significantly higher than a regulated utility's cost of equity. TR 765. Thus, witness Garrett recommends the Commission award an authorized ROE of 9.25%. He notes that although 9.25% is still clearly above FPUC's market-based cost of equity estimate of 7.8%, it represents a gradual yet meaningful move towards market-based cost of equity. TR 765.

<u>ISSUE 31:</u> What is the appropriate weighted average cost of capital to use in establishing FPUC's projected test year revenue requirement?

OPC: *Pursuant to the standards set forth in Bluefield and Hope, financial integrity should be sufficient to attract capital on reasonable terms under a variety of market and economic conditions. Under OPC's gradual approach of moving toward market

expected ROEs should allow for FPUC to maintain financial integrity. OPC's recommends capital structure of 9.25% equity return with 48% common equity with a 5.20% overall rate of return.*

ARGUMENT:

The term cost of capital, or Weighted Average Cost of Capital (WACC), refers to the weighted average cost of the components with a company's capital structure, including the costs of both debt and equity. TR 767. As witness Garrett explained there are three primary components of WACC: (1) Cost of Debt; (2) Cost of Equity; and (3) Capital Structure. TR 767. The cost of capital is expressed as a weighted average because it is based upon a company's relative levels of debt and equity, as defined by the particular capital structure of that company. TR 767. As witness Garrett noted, companies in the competitive market often use their WACC as the discount rate to determine the value of capital projects, so it is important that this figure be estimated accurately. TR 768.

Pursuant to the standards set forth in *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), financial integrity should be sufficient to attract capital on reasonable terms under a variety of market and economic conditions. Under OPC's gradual approach of moving toward market expected ROEs should allow for FPUC to maintain financial integrity. OPC's recommends capital structure of 9.25% equity return with 48% common equity with a 5.20% overall rate of return.

NET OPERATING INCOME

ISSUE 32: Has FPUC properly removed Purchased Gas Adjustment and Natural Gas Conservation Cost Recovery Revenues, Area Extension Plan Revenues, Expenses, and Taxes Other than Income from the projected test year?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 33: Has FPUC made the appropriate adjustments to remove all non-utility activities from operation expenses, including depreciation and amortization expense?

OPC: *FPUC has the burden of demonstrating that all non-utility activities from operating expense have been appropriately removed, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.*

ARGUMENT:

FPUC has the burden of demonstrating that all non-utility activities from operating expense have been appropriately removed, properly recorded on its books and records, and reflected in the MFRs. OPC is not proposing an adjustment.

ISSUE 34: Should an adjustment be made to the number of employees in the projected test year?

OPC: *FPUC has the burden of demonstrating the need for any additional employees in the 2023 project test year, particularly if there is any potential for a merger in near future years.*

ARGUMENT:

FPUC has the burden of demonstrating the need for any additional employees in the 2023 project test year, particularly if there is any potential for a merger in the near future.

ISSUE 35: What is the appropriate amount of salaries and benefits to include in the projected test year?

OPC: *The appropriate amount of salaries and benefits in the 2023 projected test year should be adjusted consistent with OPC's recommended adjustments of $1.098 million for incentive compensation, and $1.376 million for executive/management stock-based compensation. The appropriate amount of benefits is $2,914,960, which reflects OPC's adjustment for SERP (Stipulated). *The appropriate amount of salaries remains in dispute.**

ARGUMENT:

This issue is stipulated on the appropriate amount of benefits that should be included in the projected test year. The parties have stipulated that the appropriate amount of benefits is $2,914,960, which reflects OPC's adjustment for SERP of $1762 (Stipulated). The appropriate amount of salaries remains in dispute and is discussed below.

Incentive Compensation

The Company has an incentive performance plan (IPP) available to its employees. TR 1156. The IPP for 2021 was the incentive plan that witness Smith utilized for his analysis. TR 1156. Under the IPP, eligible employees have the opportunity to earn an annual cash bonus/incentive. TR 1158. The IPP has four categories: (1) the individual's performance rating (PR) annual score; (2) Chesapeake Corporate Earnings Per Share (EPS) overall annual results; (3) Consolidated Return on Equity; and (4) identified non-financial goals, including safety for 2021, and added other non-financial goals each year such as Equity, Diversity and Inclusion; Net Promoter; Engagement, etc. TR 1157. The total incentive compensation included in test year is

$2,180,201 of which $1,242,623 is non-executive and $937,578 is for executives. TR 1158. Witness Smith testified that 50% of the incentive compensation included in the projected 2023 test year should be charged to shareholders. TR 1158. Specifically, he recommends disallowance for the 25% related to CUC's EPS performance category and 25% related to the consolidated ROE category. TR 1158. Witness Smith testified that the removal of these costs provide an equal sharing of such cost, and therefore provides an appropriate balance between the benefits attained by both shareholders and ratepayers. TR 1159. He further explains that with both shareholders and ratepayers benefit from achievement of performance goals, shareholder are the primary beneficiary of achieving corporate EPS and ROE goals. TR 1159. He also notes that there is no guarantee that the levels of incentive compensation will continue into the future. TR 1159. Thus, witness Smith recommends decreasing the incentive compensation in the test year by $1,090,101.

Of course the Company's witness Galtman disagrees with any disallowance of the cost from the IPP which would be borne by shareholders. TR 994. He disagrees that there is distinction between how incentive compensation benefits shareholder and ratepayers. He argues that a strong, financially sound utility is better able to ensure safe and reliable service to customers. TR 995. However, witness Galtman misconstrues witness Smith's argument about benefits. Ratepayers already compensate the Company for a strong, financially sound company in the ROE award. The incentives for the employees to maximize shareholder earnings is truly to benefit shareholders.

Stock-Based Compensation

Witness Smith also recommends disallowances of CUC 2013 Stock and Incentive Compensation Plan and stock-based compensation issued to officers and executives of CUC and its Board of Directors. TR 1160. The plan states that its purpose is to enhance shareholder value by linking the compensation of officers, directors, and employees of the Company to increases in the price of CUC common stock and to motivate, retain and encourage such employees and directors to act in shareholders' interest. TR 1161. Witness Smith explains that ratepayers should not be required to pay executive or management compensation that is based on the parent company's stock price or whose primary purpose is to benefit the parent's shareholders and aligning the interests of participants with those of such shareholders. TR 1161. He further testified that charging shareholder-oriented expense to FPUC's revenue requirement would not be good regulatory policy. TR 1161. Moreover, he notes that FPUC failed to provide any studies that demonstrate a quantitative benefit to FPUC's ratepayers from the provision of stock-based compensation directly charged to the Company and/or allocated to FPUC from CUC. TR 1161.

He also points to the prior revision to the financial accounting standards where such costs were typically treated as a dilution of shareholders' investments (i.e., the cost was borne by shareholders.)

Witness Galtman argues that this stock-based compensation is part of the overall compensation package that the Company offers to ensure it can retain, attract, and motivate employees which allows for safe and efficient operations for the Company's customers. TR 999. However, this argument does not refute the sound policy rationale for denying inclusion of CUC executive and Board of Directors stock-compensation. As witness Smith pointed out, there is no justification why or how inclusion of stock-compensation in the FPUC revenue requirement benefits ratepayers. TR 1161. Witness Smith testified that FPUC's projected 2023 test year cost of service should be reduced by $1.376 million to remove stock-based compensation which includes $169,107 that FPUC stated is to be provided to the Board of Directors of CUC.

Conclusion

The appropriate amount of salaries and benefits in the 2023 projected test year should be adjusted consistent with OPC's recommended adjustments of $1.098 million for incentive compensation, and $1.376 million for executive/management stock-based compensation. The appropriate amount of benefits is $2,914,960, which reflects OPC's adjustment for SERP (Stipulated). *The appropriate amount of salaries remains in dispute.*

ISSUE 36: What is the appropriate amount of pensions and post-retirement benefits expense to include in the projected test year?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 37: Should an adjustment be made to remove a portion of Directors and Officers Liability ("D&O") insurance expense from projected test year cost of service?

OPC: *Yes, due the nature of D&O Liability Insurance protecting shareholders from harmful Board of Director decisions, one half of D&O Liability Insurance should be removed (sharing costs between shareholders and ratepayers), an adjustment should be made to remove $85,528 for D&O insurance expense from projected test year cost of service.*

ARGUMENT:

Witness Smith recommends adjusting the D&O liability insurance expense by the half. TR 1164. He testified that D&O liability insurance protects the shareholders from the decisions they made when they hired the Board of Directors and that Board of Directors in turn hired the executive

officers of the Company. TR 1165. Witness Smith asserts that there is no question that D&O liability insurance is primarily for the benefit of the shareholders and as such the shareholders should be responsible for at least some of the costs. TR 1165.

Witness Smith acknowledges that some argue that D&O is a necessary business expense which protects ratepayers. TR 1165. In fact, FPUC witness Russell makes the argument that without D&O insurance, the Company's assets are at risk and a D&O policy mitigates this risk by covering legal fees and other costs associated with such suits. TR 985. He also claims that some employees and directors would refuse to accept a position in a company that does not have a D&O policy and refuses to purchase one. TR 985. Since FPUC has a D&O policy, the potential for not being able to attract employees and directors is moot.

Witness Russell acknowledges that D&O insurance provides benefits to shareholders, he claims that it also provides coverage for lawsuits brought by other parties, including employees, customers, creditors, vendors, competitors, and regulators. TR 985. However, as witness Smith testified, the primary purpose of D&O insurance is the protection of shareholders from the imprudent decisions of the Board and the officers of the Company, which would be the subject of lawsuits brought by shareholders against the officers and directors. TR 1166. He states that the benefits of this insurance clearly inures primarily to shareholders; some of whom generally are the parties initiating any suit against the directors and officers. TR 1166.

Witness Smith notes that unlike an unregulated entity, criteria exists for recovery of costs, such as prudence and benefit. TR 1166. He further testified he would be recommending either complete disallowance or at the very least equal sharing of D&O policy costs because the benefits of D&O insurance is primarily for shareholders. TR 1166. However, witness Smith acknowledges that this issue has been addressed in prior cases where the Commission allowed electric companies to place one-half the cost of the D&O liability insurance in test year expenses and working capital.[13] Thus, due to the nature of D&O Liability Insurance protecting shareholders from harmful Board of Director decisions, one half of D&O Liability Insurance should be removed (sharing costs between shareholders and ratepayers), an adjustment should be made to remove $85,528 for D&O insurance expense from projected test year cost of service.

---

[13] See, Order No. PSC-2012-0179-FOF-EI, issued April 3, 2012, Docket No. 20110138-EI, In re: Petition for increase by Gulf Power Company, at p. 101. 4 See, Order No. PSC-20100131-FOF-EI, issued March 5, 2010, in Docket No. 20090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc. at p. 99.

ISSUE 38: Should the projected test year O&M expenses be adjusted to reflect changes to the non-labor trend factors for inflation and customer growth?

OPC: *FPUC has the burden of demonstrating that the changes to the non-labor trend factors for inflation and customer growth included in the projected test year O&M expenses are appropriate.*

ARGUMENT:

FPUC has the burden of demonstrating that the changes to the non-labor trend factors for inflation and customer growth included in the projected test year O&M expenses are appropriate.

ISSUE 39: What is the appropriate annual storm damage accrual and cap?

OPC: *While FPUC has not demonstrated the need to increase the storm accrual, all FPUC business units should be covered by the current storm reserve. TR 214, 216. FPUC proposal to maintain the maximum reserve amount at $1,000,000 is appropriate without an increase in the annual accrual. TR 216. The annual accrual should remain at $6,000 annually.*

ARGUMENT:

FPUC witness Napier testified that the projected balance of the Storm Reserve, Account 228.1, was forecast to increase by $4,000 over the historic test year of $6,000. TR 202. In other words, the Company is requesting an increase in the storm accrual from $6,000 to $10,000. She testified that conditions related to storm activity have changed from the last rate case and claims Florida is projected to experience an increased number of minor and name storms in coming years. TR 202. However, witness Napier failed to provide any documentation to support this bald faced assertion.

Witness Napier also testified that the Company's expanded territory footprint means that more of the Company is exposed to the risk of storm damage, which she suggest shows a need to increase the reserve at this time. TR 202. However, the Company did not provide any actuarial-type study that demonstrates the need for an increase in the storm accrual. In fact, in response to OPC Interrogatory No. 38, a review of the storm reserve account provided since 2016 shows a healthy reserve balance at the end of 2021 of $662,534.12. EX 97. The largest deduction from the storm reserve was in 2017 in the amount of $103,220. TR 269. Witness Napier conceded that FPUC did not come in for a rate increase in 2017. TR 270. In 2018 and 2020, there were no deductions from the storm reserve. EX 97. At no point over the period of 2016 through 2021, did storm reserve have a negative balance and has remained over $600,000 thousand. TR 270, EX 97.

While FPUC has not demonstrated the need to increase the storm accrual, all FPUC business units should be covered by the current storm reserve. TR 214, 216. FPUC proposal to

maintain the maximum reserve amount at $1,000,000 is appropriate without an increase in the annual accrual. TR 216. The annual accrual should remain at $6,000 annually.

ISSUE 40: Is a Parent Debt Adjustment pursuant to Rule 25-14.004, Florida Administrative Code, appropriate, and if so, what is the appropriate amount?

OPC: *Yes, a Parent Debt Adjustment is required. The adjustment reduces federal income tax expense by $679,973. FPUC has failed to rebut the presumption that parent debt is embedded in FPUC's equity.*

ARGUMENT:

Despite the Company having the burden of proof, this issue was raised by OPC witness Smith who testified that:

> Rule 25-14.004, F.A.C, "Effect of Parent Debt on Federal Corporate Income Tax" requires such an adjustment, absent the Company carrying its burden of rebutting that the jurisdictional equity is supported by debt on the parent's books.[6] The intent of Rule 25-14.004, F.A.C., is to require an adjustment to the income tax expense of a regulated company to reflect the income tax benefit of the parent debt that may have been invested as equity of the subsidiary.

TR 1169.

At the outset, it should be noted that the PDA rule is in effect, is mandatory, and that no waiver of its application has been sought pursuant to Section 120. 542, Fla.Stat. The PDA rule is intended to address the affiliate transaction that arises when tax deductible debt at the parent level may be invested in the equity of the subsidiary. The rule presumes that the customers of the regulated subsidiary who pay a statutory tax rate in the calculation of their rates, are paying an excessive return on equity because the true nature of the equity component upon which that return is based is actually partially supported by debt. In effect where this fact situation occurs, the ratepayers are paying a gross-up on the ROE for the income taxes applicable to that profit earned by the shareholders. If and to the extent that there is debt invested in the equity of the subsidiary, the shareholders – here CUC – would not owe the IRS income taxes on the full amount of the profit they earn. That is because the interest on the debt that supports the equity investment is tax deductible for the parent company shareholders. Despite the nomenclature of the rule this is a classic transfer of a benefit to the parent's shareholders. It is an affiliated transaction. The rule

accords this transaction a heightened level of scrutiny by imposing the mandatory application coupled with the rebuttable presumption.

Accordingly, where debt ***may*** be invested in the equity that is included in the equity portion of the capital structure that is intended to support the regulated subsidiary's rates, the PDA rule requires that the parent share some of the tax deductions with the subsidiary as an income tax expense offset. This is intended to ameliorate the customer harm from the affiliate transaction that effectively transfers an excessive profit to the parent/shareholders. Thus, the PDA mandates that in a situation where debt at the parent company ***may*** be invested in the subsidiary equity, the affiliate benefit provided to the parent's shareholder must be equitably shared with the ratepayers who provide that benefit.

The rule creates a rebuttable presumption that the PDA must be implemented "where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return." The rule requires the adjustment to be made unless the utility rebuts the "presumption that a parent's investment in any subsidiary or in its own operations shall be considered to have been made in the same ratios as exist in the parent's overall capital structure."

The Prehearing Order reflects the Company's official position on its status relative to the rule as follows:

> FPUC is not a borrower under any third-party debt arrangement. Instead, CUC, the parent company of FPUC, maintains all the third-party debt. When filing a consolidated tax return of CUC and its subsidiaries (including FPUC), the tax deduction for interest expense is determined by the interest associated with the third-party debt held by the parent. As FPUC has no third-party debt, there is no tax deduction for interest expense recorded on the subsidiary's Federal income tax return. While FPUC has no debt on its books and records, an allocated portion of the parent's capital structure is applied to the rate base of FPUC as illustrated in MFR G-3 page 2.[14]

In its position, FPUC admits to the key elements for application of the rule. A parent relationship exists. The Florida companies are subsidiaries. The subsidiaries and the parent join in a consolidated federal income tax return. There is a subsidiary income tax return. FPUC's testimony does not address whether there is parent debt invested in the equity of FPUC. It does

[14] Order No. PSC-2022-0355-PHO-GU at 25

not directly rebut this presumption. Instead witness Reno merely testified that FPUC was acquired with one hundred percent equity and carries no associated debt. So what?

This testimony and position of the Company fail to address the actual nature of the investment of the acquiring parent (CUC) ***in FPUC*** (or the other three subsidiaries) subsequent to purchase. The Company's evidence does nothing to rebut the presumption that there is debt invested in the equity of FPUC. The Company failed to prove that there is no portion of the debt held by CUC that is in turn invested in the equity that is recorded on the books of FPUC for surveillance and other purposes. Testimony at hearing in fact shows that funds that support the amounts that are recorded as equity on the books of FPUC are made up of a mix of debt and equity. TR 238-239; 1008-1009. This is important because if CUC is earning an after tax equity return on dollars that are actually invested in the subsidiary and supported by debt, then an excessive return on the nominal equity balance is transferred to CUC and shareholders.

What FPUC really seems to be contending in this case is that at the CUC level, debt and equity are booked appropriately in separate accounts. There appears to be no dispute here. The most recent SEC filing, the Second Quarter 10-Q reflects this separation and an equity ratio of 52.2% as of June 30, 2022. TR 177-178, 324-325; EX 118, page 4. From this factual situation the Company is asking the Commission to take the leap of logic and assume that the separation holds true at the subsidiary level. This is an assumption that is far from clear and not supported by the facts.

While it is clear that *at the CUC level* there is no investment of third party debt in the shareholder equity, the ratemaking issue for the Florida regulator arises when the murky nature of the investment of CUC is reflected on the regulated Florida business unit books for various ratemaking and reporting purpose. The actual funds invested in the Florida Company includes a mixture of debt and equity. TR 238-239; 1008-1009. For purposes of setting rates and extracting payment from its customers, FPUC proposes a synthetic method of reflecting capitalization. The way the Company is financed on a day-to-day basis appears to be a different matter altogether.

The CUC third party debt that FPUC mentions in its testimony and proposed capital structure is not actually recorded on the books of the Florida companies, as shown on the annual reports filed with the Florida Public Service Commission. EX 119. For surveillance reporting purposes, however, this debt is artificially allocated or assigned (since it is not recorded on the books) to the books of the subsidiaries. EX115. A similar assignment of such dollars is proposed for the rate case on the MFRs. EX 123, TR 218. The Company testifies that it appropriately

allocates the interest associated with this debt (once reconciled to the established, jurisdictional rate base) to the income tax determination for ratemaking purposes. TR 209. The OPC does not dispute the mechanics of this process, but this is not the end of the inquiry. Based on the PDA rule, it is beside the point because the dispute in this case is centered on the equity portion of the subsidiary capital structures. It is clear that FPUC reflects no additional interest expense deduction that reduces federal income tax expense related to the debt invested in the equity supporting the operations of the FPUC companies. What is not clear is that there is no debt embedded in the equity that represents FPUC's actual capitalization. That is where the issue is found.

For the equity component, the Company only records retained earnings actually booked on the annual reports filed with the Commission. TR 914. These reports also reflect the recording of the closing of net income to the retained earnings balance (twelve-month increase) and the payment of dividends – if any. EX 119 at 7, 9, 13, and 19. Otherwise there is no paid-in capital component of shareholder's equity recorded on the actual books for the Florida subsidiaries. This is where the recording of actual dollar amounts ends. This means that a central question remains: "What is the proper capitalization of the Florida subsidiaries for ratemaking purposes?" This issue is also discussed in Issues 23 and 29. As discussed in more detail there, there is conflicting testimony about the mix of debt and CUC equity that makes up the funding of the asset investment in FPUC. It must be kept in mind that the PDA rule presumes that debt "may" be invested in the equity of the subsidiary. For the presumption to be rebutted the Company must essentially affirmatively prove that there cannot be parent debt embedded in the subsidiary equity. On this record FPUC and CUC fail to rebut the presumption. This lack of clarity is strong evidence that FPUC has failed to rebut the presumption allowed by the PDA rule and the mandatory application of the rule should be made in the amount of $679,881.

ISSUE 41: Should an adjustment be made to Regulatory Commission Expense for Rate Case Expense for the projected test year, and what is the appropriate amortization period?

OPC: *The rate case expense should be no more that estimated provided in FPUC witness Cassel testimony of $3,427,574 million, amortized over five-years. The projected test year should include no more than $685,515 in the projected 2023 test year for rate case expense.*

ARGUMENT:

Witness Cassel testified that the Company was requesting a total rate case expense of $3,427,574 to be amortized over a period of five years at $685,515 annually. TR 71. He testified that FPUC projected rate case expenses based on specific forecasts, including the cost of using

consultants to assist in preparing and supporting a rate case and the cost of representation and consultation by an attorney. TR 71.

On September 9, 2022, FPUC filed revised direct testimony for their Witness Lee due to errors or "oversights." TR 530. She acknowledged that these errors were discovered when responding to some discovery. TR 531. In response to Staff discovery, Interrogatory No. 142, FPUC said that there was a slight increase in the projected amount of rate case expense from $3,427,574 to $3,672,702 which was attributed to availability of up-to-date projections. EX 85. These projections were provided in response to discovery sent September 27, 2022, after this revised testimony was filed and after OPC pre-filed testimony was filed on August 24, 2022. While intervenors had the opportunity to vet the amount of projected rate case expense provided in Witness Cassel testimony, the supplemental amount was only updated days before the hearing. Some of the additional amount would necessarily be due to correction of the Company's errors and should not be allowed to be recovered from customers.

Thus, the rate case expense should be no more that estimated provided in FPUC witness Cassel testimony of $3,427,574 million, amortized over five-years. The projected test year should include no more than $685,515 in the projected 2023 test year for rate case expense.

ISSUE 42: Should an adjustment be made to Uncollectible Accounts and for Bad Debt in the Revenue Expansion Factor?

OPC: *FPUC has the burden of demonstrating that the amount of Uncollectible Accounts and Bad Debt in the Revenue Expansion Factor are appropriate and the total amount of bad debt should be included in the projected test year base rates.*

ARGUMENT:

FPUC Witness Grimard testified that the Company is proposing to recover bad debt expense associated with individual cost recovery mechanisms and riders within each specific recovery mechanism or rider. TR 672. Specifically, FPUC is asking for the bad debt associated with the Purchased Gas Cost Recovery Factor, Energy Conservation Cost Recovery, and Swing Service Rider. TR 672. FPUC removed the bad debt expense that they associate with these clauses and rider. TR 672. Accordingly, the Company would propose to allocate the bad debt costs across rate classes in accordance with the cost allocation methodology in place for these clauses and rider. TR 672. Witness Cassel testified that 70% of the bad debt expense would be allocated to base rates and 30% to the clauses and rider. TR 62. Witness Cassel testified that this change would allow

them to adjust the bad debt expense related to the clauses and rider rather than remain fixed when collected through base rates. TR 63.

Witness Grimard acknowledged that bad debt expense is currently being recovered through base rates. TR 685-686. She also acknowledged that she was not aware of any Florida gas company that is not recovering bad debt expense in base rates. TR 686. Witness Grimard only justification for seeking a change in the Commission long-standing practice of recovering bad debt expense in base rates is merely asserting that "we feel it's more appropriate" for the bad debt expense to be recovered with these clauses and riders. TR 686. This is not sufficient justification to change the Commission's long-standing practice. The fact that the Company has not come before the Commission for a base rate increase for thirteen years demonstrates that recovery of bad debt expense in base rates is not an issue.

The Company has the burden to demonstrate that a change in the Commission's long-standing practice of collecting bad debt only through base rates is warranted. The Company has not met the burden to demonstrate that a change in the collection methodology in necessary, thus the total bad debt should be included in the projected test year.

Witness Cassel has testified that if the Commission denies their request to partially change the collection of bad debt, the additional bad debt expense associated with the clauses and riders would need to be added into the revenue requirement and recovered through base rates. OPC notes that FPUC has the burden of demonstrating that the amount of Uncollectible Accounts and Bad Debt in the Revenue Expansion Factor are appropriate.

ISSUE 43: Should an adjustment be made to reduce rental expense from the projected test year?

OPC: *The rental expense shall be reduced by $78,249 in the projected 2023 test year. (Stipulated)*

ARGUMENT:

This issue has been stipulated.

ISSUE 44: What is the appropriate amount of projected test year O&M expenses? (Fallout Issue)

OPC: *The amount of projected test year O&M expense should reflect all OPC's recommended adjustments and results in a balance of $41,314,859.*

ARGUMENT:

The amount of projected test year O&M expense should reflect all OPC's recommended adjustments and results in a balance of $41,314,859.

ISSUE 45: Do FPUC's adjustments to Florida Common and Corporate Common depreciation and amortization expense allocated appropriately reflect allocations among FPUC's gas division, FPUC's electric division, and non-regulated operations? If not, what additional adjustments, if any, should be made?

OPC: *FPUC has the burden of demonstrating that the amount of Florida Common and Corporate Common depreciation and amortization expense allocated appropriately reflect allocations among FPUC's gas division, FPUC's electric division, and non-regulated operations included in the projected test year are appropriate. These amounts should reflect all applicable OPC depreciation adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of Florida Common and Corporate Common depreciation and amortization expense allocated, appropriately reflect allocations among FPUC's gas division, FPUC's electric division, and non-regulated operations included in the projected test year are appropriate. These amount should reflect all applicable OPC depreciation adjustments.

ISSUE 46: What is the appropriate amount of depreciation expense to include in the projected test year for FPUC's GRIP program?

OPC: *FPUC has the burden of demonstrating that the amount of depreciation expense included in the projected test year for FPUC's GRIP program are appropriate. These amounts should reflect all applicable OPC depreciation adjustments as shown on EX 63, exhibit DJG-S21.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of depreciation expense included in the projected test year for FPUC's GRIP program are appropriate. These amounts should reflect all applicable OPC depreciation adjustments as shown on EX 63, exhibit DJG-S21.

ISSUE 47: What is the appropriate amount of Depreciation and Amortization Expense for the projected test year? (Fallout Issue)

OPC: *FPUC has the burden of demonstrating that the amount of Depreciation and Amortization Expense included in the projected test year are appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $13,103,290.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of Depreciation and Amortization Expense included in the projected test year are appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $13,103,290.

ISSUE 48: What adjustments, if any, are appropriate to account for interest synchronization?

OPC: *The federal income tax expense should be reduced by $134,104 for an interest synchronization adjustment. This amount should be adjusted as shown in Exhibit 1 to this Brief, to the extent the Commission reverses the Affiliate Payable Adjustment in Issue 23 and reduces rate base. *

ARGUMENT:

OPC Witness Smith testified that an interest synchronization adjustment allows the adjusted rate base and cost of debt to coincide with the income tax calculation. TR 1168. He stated that since interest expense is deductible for income tax purposes, any revisions to the rate base or the weighted cost of debt will impact the test year income tax expense related to the amount of the regulate utility's jurisdictional debt supporting the jurisdictional rate base. TR 1168. Since OPC's proposed rate base and weight cost of debt is different from the Company's proposed amounts, OPC's recommended interest deduction debt will differ from the interest deduction used by the Company in its filing. TR 1168. Witness Smith testified that consequently, OPC's recommended debt ratio increase in this case will lead to a greater interest deduction in the income tax calculation. TR 1168. He stated that OPC's recommended adjustments to the rate base with result in a reduction to income tax expense in the amount of $134,104. This amount should be adjusted as shown in Exhibit 1 to this Brief, to the extent the Commission reverses the Affiliate Payable Adjustment in Issue 23 and reduces rate base.

ISSUE 49: Should any adjustments be made to the amounts included in the projected test year for amortization expense associated with the acquisition adjustment?

OPC: *Yes, the acquisition adjustment amortization expense of $1,139,750 should not be allowed to be included in 2023 test year operating expenses related to the FPUC merger acquisition adjustment. FPUC has failed to demonstrate the synergy from the merger are still occurring.*

ARGUMENT:

OPC witness Smith testified that the Commission allowed Chesapeake Utilities Corporation (CUC) to record a $34,192,493 purchase price premium related to the acquisition of FPUC as a positive acquisition adjustment to be amortized over a 30-year period beginning in

November 2009. TR 1146. He noted that FPUC included the $34,192,493 acquisition adjustment (net of accumulated amortization in its projected 2023 test year average rate base). TR 1146. Several FPUC witnesses, Cassel, Napier, and Deason, address whether the Commission should continue to allow the positive acquisition adjustment. TR 1146.

As witness Smith testified, in Order No. PSC-2012-0010-PAA-GU at page 17, the Commission ordered that the level of the cost saving supporting CUC's request will be subject to review in FPUC's next rate case. The Commission further stated that if it is determined that the cost saving no longer exist, the acquisition adjustment may be partially or totally removed as deemed appropriate by the Commission. TR 1147.

FPUC's witness Napier summarizes the Company's request to continue to retain and recover the unamortized acquisition adjustment over the remaining approved period of time, and remove the requirement to re-evaluate cost savings in order to keep the acquisition adjustment. TR 219. Witness Napier created an exhibit, EX 8 that purported to show net cost savings of $4,462,872 for FPUC. TR 220. However a closer analysis of EX 8 shows that these cost savings are neither acquisition-related nor an apples-to-apples comparison. For example, witness Napier included cost savings for fuel, but could not answer if those savings are largely due to market fluctuations. TR 257-258. Moreover, she included all 2009 O&M expenses except pension costs and rate case expense, but removed over ten O&M expense items included in the 2023 projected test year and added in only one O&M expense item. EX 8. If these removed O&M expenses that will be recovered from customers are added back into the analysis, the O&M "cost savings" are reduced by $4.367 million to $1,030,371. When adjusted to include all the appropriate O&M costs included in customer rates, total "cost savings" are $2,393,200 which is less than the remaining acquisition amortization of $2,647,134. EX 8. In other words, there is no continuing costs savings for customers.

Witness Smith testified that FPUC's other witnesses Cassel and Deason attempt to show they are relying on the five factors discussed in Order No. PSC-2012-0010-PAA-GU to keep the acquisition adjustment. TR 1149. Those five factors include: (1) increase in quality of service; (2) lower operating costs; (3) increased ability to attract capital from improvements; (4) lower overall cost of capital; and (5) more professional and experienced managerial, financial, technical and operational resources. TR 1149. As witness Smith notes the Company failed to demonstrate that the acquisition fully meets all five criteria. TR 1150.

FPUC witness Cassel points to improved level of professionalism and improved access to capital. TR 1085. He asserts that there were a number of system improvements, as discussed by other FPUC witnesses, that would not have been made or would have been significantly delayed but for the merger. TR 1087. He attributes this to FPUC being a "mom and pop" operation prior to the acquisition. TR 1087. Witness Smith testified that as to be expected, normal improvements were made subsequent to the merger that involve investments in utility plant that are included in rate base and allowed to earn a return for the Company. TR 1150. He stated that there is nothing special or extraordinary about this, or that these investments were made as a consequence of the merger as opposed to other business reasons. TR 1150. Witness Smith cites the GRIP program as an example because it was implemented to meet federal safety requirements, although witness Cassel contends that the GRIP program was not "required" and would not have been done on an expedited basis under prior management. TR 1080, 1150. However, the federal legislation that required a plan to replace aging infrastructure was enacted in 2011 after the merger and was relied on by the Companies to approve their GRIPs. Order No. PSC-2012-0490-TFT-GU, issued September 24, 2012, in Docket No. 20120036, In re: Joint Petition for Approval of Gas Reliability Infrastructure Program (GRIP) by Florida Public Utilities Company and the Florida Division of Chesapeake Utilities Corporation, at pp. 1-2. Moreover, FPUC had a bare steel replacement and recovery program approved in its 2004 rate case modified to also include steel tubing in the 2008 rate case amortized over a 50 year period. *Id.* at pp. 2-3.

FPUC witness Cassel argues that witness Smith ignored the "cost savings" testimony. TR 1089. However, witness Smith addressed in his testimony the economic impacts of the acquisition adjustment on ratepayers. Witness Smith testified it is not clear whether any substantial operational economies have been achieved through the acquisition that can be attributed to CUC's ownership of the FPUC gas distribution utility. TR 1152. Moreover, witness Smith testified that the large rate increases being sought in the current rate case are indicators that customers would be adversely impacted if the acquisition adjustment is allowed to be included in rate base. TR 1151.

FPUC witness Deason claimed that Florida's regulatory policies prevent regulated utilities from intentionally paying more for an acquisition that can be economically justified. TR 1107. However, witness Deason inappropriately interjects a public interest standard as the ultimate test when the Commission's policy is to look to the five factors (which he acknowledges). TR 1107. Witness Deason also inappropriately attempts to place the burden of proof on customers to show

a material change warrants that the acquisition adjustment is no longer in the public interest, contrary to his admonishment that witnesses should not opine on whether a burden has been met. TR 1107-1109. Then witness Deason argues that a rate increase after 12 years is not a basis for finding the acquisition adjustment is not in the public interest because of extraneous factors, yet this ignores the long-standing burden the Company has to demonstrate continuing economic "cost savings." TR 1108.

As witness Smith testified, employees have been added and the costs to provide service have increased significantly, as demonstrated when all O&M costs are added back into the 2023 project test year. TR 1152, EX 8. These factors show that there is no on-going economic justification to allow the acquisition adjustment. As witness Smith testified, ratepayers should not be required to pay higher rates attributable to an acquisition premium paid to acquire other systems. TR 1152. CUC's acquisition of the FPUC gas distribution utility system does not continue to meet all five standards set forth above; therefore, the Company should not be allowed to recover its requested premium for the acquisition. TR 1152. The FPUC acquisition adjustment should not be included in rate base, and the related amortization expense should not be allowed to be included in 2023 test year operating expenses. The Commission should disallow the acquisition adjustment amortization expense of $1,139,750 in 2023 test year operating expenses related to the FPUC merger acquisition adjustment.

The acquisition adjustment amortization expense of $1,139,750 should not be allowed to be included in 2023 test year operating expenses related to the FPUC merger acquisition adjustment. FPUC has failed to demonstrate the synergy from the merger are still occurring.

ISSUE 50: What is the appropriate amount of projected test year Taxes Other than Income?

OPC: *FPUC has the burden of demonstrating that the amount of projected test year Taxes Other than Income is appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $7,377,715.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of projected test year Taxes Other than Income is appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $7,377,715.

ISSUE 51: What is the appropriate amount of projected test year Income Tax Expense (Fallout Issue)

OPC: *FPUC has the burden of demonstrating that the amount of projected test year Income Tax Expense is appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $709,626 for Federal and ($239,987) for State.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of projected test year Income Tax Expense is appropriate. These amounts should reflect all applicable OPC adjustments and results in a balance of $709,626 for Federal and ($239,987) for State.

ISSUE 52: What is the appropriate amount of Total Operation Expenses for the projected test year? (Fallout Issue)

OPC: *FPUC has the burden of demonstrating that the amount of Total Operation Expenses for the projected test year is appropriate. These amounts should reflect all applicable OPC adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of Total Operation Expenses for the projected test year is appropriate. These amounts should reflect all applicable OPC adjustments.

ISSUE 53: What is the appropriate amount of Net Operating Income for the projected test year? (Fallout Issue)

OPC: *FPUC has the burden of demonstrating that the amount of Net Operating Income for the projected test year is appropriate. These amount should reflect all applicable OPC adjustments and results in a balance of $16,795,756.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of Net Operating Income for the projected test year is appropriate. These amount should reflect all applicable OPC adjustments and results in a balance of $16,795,756.

REVENUE REQUIREMENTS

ISSUE 54: What are the appropriate revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPUC?

OPC: *FPUC has the burden of demonstrating that the amount of the revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPUC is appropriate. These amounts should reflect all applicable OPC adjustments.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of the revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for FPUC is appropriate. These amounts should reflect all applicable OPC adjustments.

ISSUE 55: What is the appropriate annual operating revenue increase for the projected test year? (Fallout Issue)

OPC: *FPUC has the burden of demonstrating that the amount of annual operating revenue increase for the projected test year is appropriate. These amounts should reflect all applicable OPC adjustments. With all of OPC's recommended adjustments, the increase in the revenue requirement should be no more than $7.8 million.*

ARGUMENT:

FPUC has the burden of demonstrating that the amount of annual operating revenue increase for the projected test year is appropriate. These amounts should reflect all applicable OPC adjustments. With all of OPC's recommended adjustments, the increase in the revenue requirement should be no more than $7.8 million, subject to any further reduction required by reversal of the Affiliated Payables Adjustment discussed in Issue 23 and supported in Exhibit 1 to this brief. After consideration of the improper rate base increase addressed in Issue 23, the $7.8 million maximum revenue increase originally recognized by OPC witness Smith would need to be offset by $8.3 million related to that issue, actually leading to as much as a $500,000 reduction in rates. Accordingly, FPUC has not demonstrated that it is entitled to any revenue increase, exclusive of the GRIP revenue requirement transfer into base rates. This means that FPUC's entire increase is excessive.

COST OF SERVICE AND RATE DESIGN

ISSUE 56: Should FPUC's proposal to consolidate its cost of service for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown be approved?

OPC: *No, unless the proposed consolidation of its cost of service is non-discriminatory and consistent with OPC's recommendation on the other issues in this docket.*

ARGUMENT:

Assuming the proposed consolidation of its cost of service for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket, the Commission may approve the proposed

consolidation of its cost of service. If the proposed consolidation of its cost of service are not consistent with OPC's recommended adjustments in the other issues then the proposed consolidation of its cost of service should be adjusted accordingly.

ISSUE 57: Is FPUC's proposed cost of service study appropriate?

OPC: *No, unless the proposed cost of service study is non-discriminatory and consistent with OPC's recommendation on the other issues in this docket.*

ARGUMENT:

Assuming the proposed cost of service study for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown is non-discriminatory and consistent with OPC's recommendation on the other issues in this docket, the Commission may approve the cost of service study. If the cost of service study is not consistent with OPC's recommended adjustments in the other issues then the cost of service study should be adjusted accordingly.

ISSUE 58: Are FPUC's proposed consolidated residential and commercial rate classes appropriate?

OPC: *No, unless the proposed consolidated residential and commercial rate classes are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket.*

ARGUMENT:

Assuming the proposed consolidated residential and commercial rate classes for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket, the Commission may approve the consolidated residential and commercial rate customer classes. If the consolidated residential and commercial rate classes are not consistent with OPC's recommended adjustments in the other issues then these consolidated residential and commercial rate classes should be adjusted accordingly.

ISSUE 59: Are FPUC's proposed customer charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown appropriate?

OPC: *No, unless the proposed customer charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket.*

ARGUMENT:

Assuming the proposed customer charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket, the Commission may approve the customer charges. If the customer charges are not consistent with OPC's recommended adjustments in the other issues then these customer charges should be adjusted accordingly.

ISSUE 60: Are FPUC's proposed per therm distribution charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown appropriate?

OPC: *No, unless the proposed per therm distribution charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket.*

ARGUMENT:

Assuming the proposed per therm distribution charges for Florida Public Utilities Company, CFG, Fort Meade, and Indiantown are non-discriminatory and consistent with OPC's recommendation on the other issues in this docket, the Commission may approve the proposed per therm distribution charges. If the proposed per therm distribution charges are not consistent with OPC's recommended adjustments in the other issues then these proposed per therm distribution charges should be adjusted accordingly.

ISSUE 61: Are FPUC's proposed consolidated miscellaneous service charges appropriate?

OPC: *The consolidation of miscellaneous service charges are appropriate. However, the increases of greater than $10 for most miscellaneous service charges may lead to rate shock for customers.*

ARGUMENT:

FPUC Witness Grimard testified that FPUC was consolidating its miscellaneous service charges. TR 683. She stated that FPUC was trying to standardize the tariffs so that all of the applicable charges apply across all four business units. TR 683. However, many of these miscellaneous service charges are increasing by more than $10 for those charges that existed. EX 33. There appear to be some of the miscellaneous service charges that are being set at or greater than 1.5 times the previous rate. EX 33 at pp. 1-4. Only a few miscellaneous service charges are going down. EX 33. Even though Witness Grimard testified these increases were derived from a cost of service study, the Commission should reconsider the requested amounts and set them to reduce potential rate shock.

ISSUE 62: Is FPUC's proposal to modify its existing AEP appropriate?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 63: Is FPUC's proposed Environmental Cost Recovery Surcharge an appropriate mechanism to recover environmental remediation costs related to FPUC's former manufactured gas plant sites?

OPC: *No. The Commission should provide for recovery of any environmental costs through base rates.*

ARGUMENT:

In the Chesapeake Division's last base rate case, Chesapeake was allowed to recover $956,257 in environmental clean-up cost over a period of four years as a surcharge. Petition p. 6. Chesapeake requested a four year amortization period for collection of these environmental costs. Order No. PSC-2010-0029-PAA-GU, issued January 14, 2010, in Docket No. 20090125-GU, at p. 23. The Commission found at the time that these environmental costs need to be removed from the books and recovered by the Company in timely manner. *Id.* This environmental surcharge was proposed as temporary. *Id.* at p 30. When the Commission approved this temporary environmental surcharge, it stated that "the surcharge ha[d] the advantage over collection through base rates because once the costs have been recovered, Chesapeake can remove the charge from customer bills without having to file a rate proceeding for modification to its base rates." *Id.* The Commission noted that once the costs were collected, the storm cost surcharge was discontinued. *Id.*

In contrast to the temporary nature of this previous environmental surcharge (which was extended and ended August 31, 2015[15]), FPUC is asking to establish a permanent environmental surcharge. Petition at p. 16. Currently, FPUC division has been recovering these environmental costs in base rates. TR 75. Neither the Ft. Meade nor Indiantown division have environmental remediation requirements. TR 57. Witness Cassel also testified that the Chesapeake division continued to incur environmental remediation costs in excess of the regulatory liability they were allowed to create with the over collected funds from its temporary surcharge. TR 57.

Witness Cassel suggest that their rationale for seeking environmental cost recovery in the form of a surcharge rather than in base rates is for rate predictability and standardization of the recovery of remaining remediation costs for the entire, consolidated Company. TR 57-58.

[15] Order No. PSC-2014-0052-PAA-GU, issued January 27, 2014, in Docket No. 20130273-GU, at p. 5.

However, rate predictability and standardization of cost recovery will also be achieved through recovery in base rates. In fact, Witness Cassel testified that the Company's outside consultant expected clean-up efforts and monitoring to continue for at least 15 years. TR 59-60. This request is unlike the prior surcharge which was proposed and approved as temporary for a four year period that was extended an additional 20 months. See, Order No. PSC-2010-0029-PAA-GU at p. 23, Order No. PSC-2014-0052-PAA-GU at p. 5. Given the long-term nature of these costs, there is no benefit to customers from a possible removal of these costs after a defined short-term recovery period. There is no rationale for adopting the prior Chesapeake temporary surcharge approach rather the long-term nature supports the traditional approach used by FPUC division of inclusion of these costs in base rates. Therefore, the Commission should provide for recovery of any environmental costs through base rates.

ISSUE 64: Are FPUC's non-rate related tariff changes appropriate?

OPC: *No, unless the tariffs are non-discriminatory and consistent with OPC's recommendations on the other issues in this docket.*

ARGUMENT:

Assuming the tariffs are non-discriminatory and consistent with OPC's recommendations on the other issues in this docket, the Commission may approve the proposed tariffs. If the proposed tariffs are not consistent with OPC's recommended adjustments in the other issues then these proposed tariffs should be adjusted accordingly.

ISSUE 65: What is the appropriate effective date of FPUC's revised rates and charges?

OPC: *The effective date of FPUC's revised rates and charges should allow time for adequate notice to customer and prompt implementation after the Commission's final order in this matter.*

ARGUMENT:

In its Petition for Approval of Rate Adjustment, Depreciation Study, Consolidated Rates and Rate Structure under FPUC and Request for Interim Rate Relief, FPUC asked the Commission to allow their updated tariff sheets to become effective at the earliest possible date. Petition at p. 17. Once the Commission determines the appropriate rates and charges and tariffs, the effective date of FPUC's revised rates and charges should allow time for adequate notice to customers and prompt implementation after the Commission's final order in this matter.

OTHER ISSUES

ISSUE 66: Should the Commission approve a rate adjustment mechanism in the event State or Federal income tax rates change in the future?

OPC: *No. The Commission must follow its own policy that speculation about future tax changes is an inappropriate subject of rate case decisions. The Commission should require the Company to file a limited proceeding or base rate case for any future tax changes if they are earning outside their range.*

ARGUMENT:

The Commission should reject the FPUC proposal to create a tax rate change mechanism. The Commission policy has been, absent a negotiated settlement, to address tax changes if and when they happen. This policy is enshrined in an order of the Commission that forbade the OPC from *even raising the issue*, much less having the Commission approve a preemptory mechanism in case there was a tax law change. There, in ordering the OPC Issue to be stricken the presiding Commissioner stated emphatically:

> I find the issue is premature and not ripe for consideration at this time. Should federal tax changes occur in the future, the issue may be addressed at the appropriate time in a separate proceeding.

Order No. PSC-2017-0099-PHO-EI, at 107-108.[16] Clearly, consistent application of the agency's stated policy requires that the edict delivered in *Gulf Power* be followed in this case. In his zeal to insure shareholder protection witness Cassel seemed to resist acknowledging that where the converse of customer protection had been previously denied, ratemaking should not be a "heads the company wins, tails the customers lose" proposition. TR 111.

FPUC's has requested to implement a preemptory future federal and state income tax rate change provision. TR 55. The proposal is for a one-time base rate adjustment to be made within 120 days of any change to the federal or state corporate tax rate becoming law. TR 55. As Witness Cassel explained, the Company would use the forecasted surveillance report for the calendar year when tax reform would take place to calculate the impact of the tax reform on current rates and develop a uniform percentage change to base rate charges for each customer class to reflect the tax change. TR 56. This change would remain in effect until the next base rate case. TR 56.

[16] This prehearing order became final and has the full force and effect of any final order. Such orders are subject to the same standard of review on reconsideration as orders of the full Commission and cannot be dismissed or ignored as merely the order of a single Commissioner.

Witness Cassel claims that this would be the fairest mechanism for both customers and the Company to ensure consistent and predictability practice of collecting taxes by adjusting base rates when state and federal tax change to reflect the appropriate tax rate. TR 56. However, there are several shortcomings with this proposal.

First of all, Witness Cassel acknowledged that this proposal is limited to tax rate changes and not any other types of tax impacting state or federal tax law changes such as credits. TR 113-114. Second, FPUC already has benefited from a windfall related to the 2017 tax reduction act when they kept the taxes incorporated into its base rates because they were not over earning at the time. TR 116-117. So, from a customer's prospective, if there were to be a tax increase sometime in the future they would have to pay immediately and not get the potential benefits of waiting until the next base rate case so long as the Company was earning within its range. Also this is a one-time proposal, so theoretically if there were two tax change laws – the first increasing corporate taxes and second decreasing corporate taxes - customer rates could increase without a subsequent decrease in rates as long as Company stays in its range.

The Company points to several tax change provisions that were incorporated in settlements as justification for implementing this proposal. TR 56. However, those settlements were the product of negotiations including stay-out provisions and compromised revenue requirement provisions. Mr. Cassel acknowledged that he was involved in FPUC's sister electric company's negotiation of such a provision in a revenue requirement settlement later in the very same year that Gulf Power Co. customers were handed the stinging rebuke in the *Gulf Power* order. TR 112-113.

Absent a negotiated settlement, consistent with the *Gulf Power* policy decision, and to avoid an arbitrary result in violation of Section 120.68(7)(e)3, Fla. Stat., the request should be denied. FPUC has the opportunity seek recovery of any now speculative future tax changes, if and when one occurs, through a separate limited proceeding as ordered in the *Gulf Power* policy decision or base rate case if they are earning outside their range. The Commission should require the Company to file a limited proceeding or base rate case for any future tax changes if they are earning outside their range.

There should be no confusion about the August 2022 tax rate change referred to as The Inflation Reduction Act or IRA. The Company witnesses testified that it has no effect on the Company and is not an issue prospectively. Witnesses Galtman and Reno confirmed that the intent of the Company's tax proposal would be for any future tax rate change. TR 179. Even so, it should be rejected for the reasons stated above.

ISSUE 67: Should FPUC's proposal to modify its Extension of Facilities tariff to provide the Company with the option of requiring a Minimum Volume Commitment from non-residential customers be approved?

OPC: *This Issue was resolved by a Type 2 Stipulation.*

ISSUE 68: Should any portion of the interim increases granted be refunded to the customers?

OPC: *Yes, if the Commission approves final rates that are less than the amount allowed to be collected as interim rates or any portion of the interim revenue requirement related to the improper Affiliate Payables Adjustment by the Company – as discussed in Issue 23.*

ARGUMENT:

If the Commission approves final rates that are less than the amount allowed to be collected as interim rates, then the portion of the interim rates over collected should be refunded to customers. FPUC was granted $7,680,264 combined in interim rate relief as shown on page 11 of Order No. PSC-2022-0308-PCO-GU.

Furthermore, as discussed in Issue 23, the interim rates revenue requirement was increased by $12,058,569.01 based on an improper rate base increase of $122,658,297 to "[e]liminate receivable from associated companies." TR 250. This single, mislabeled Affiliate Payables Adjustment created a revenue requirement greater than the overall consolidated requested interim revenue increase of $7,129,255.[17] TR 43, 250; EX 123, MFR F-3 (Consolidated), page 1449/1456. The actual interim increase authorized by the Commission for the four companies combined was $7,680,264. Order No. PSC-2022-0308-PCO-GU. In any event the questionable increase to the working capital component of rate base exceeds the requested and granted interim request. This solution to this impact is to refund interim rates if the Affiliated Payables Adjustment in Issue 23 is reversed.

ISSUE 69: Should FPUC be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case?

OPC: *Yes, the Commission should require FPUC file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual

[17] Order No. PSC-2022-0308-PCO-GU states that the consolidated requests were $7,199,532, a relatively immaterial difference of approximately $70,277.

report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case.*

ARGUMENT:

The Commission should require FPUC file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, rate of return reports, and books and records which will be required as a result of the Commission's findings in this rate case.

ISSUE 70: Should this docket be closed?

OPC: *Yes, after the time for appeal of any final order fully resolving this case has passed.*

ARGUMENT:

This docket should be closed after the time for appeal has past.

Respectfully submitted,

Richard Gentry
Public Counsel

/s/ Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 0989789

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

EXHIBIT 1

OPC Post Hearing Brief Exhibit 1; Issue 23 Adjustment

Reverse Company Adjustment to Remove Accounts Payable to Associated Companies from Rate Base (Using OPC Capital Costs)

Projected Test Year Ended December 31, 2023

Line No.	Description	FPUC (A)	Florida Division of Chesapeake Utilities Corporation (B)	Indiantown (C)	Ft. Meade (D)	Total Company (E)	Reference
	I. Rate Base						
1	Accounts Payable to Associated Companies	$ (95,355,445)	$ (28,261,140)	$ (2,133,205)	$ (2,099,434)	$ (127,849,224)	A
2	OPC Recommended Rate of Return	5.20%	5.20%	5.20%	5.20%		B
3	Operating Income Required for Rate of Return	$ (4,960,682)	$ (1,470,231)	$ (110,976)	$ (109,219)	$ (6,651,108)	L1 x L2
4	OPC Gross Revenue Conversion Factor	1.34941	1.34941	1.34941	1.34941		C
5	Revenue Requirement Impact on Rate Base	$ (6,693,972)	$ (1,983,938)	$ (149,752)	$ (147,381)	$ (8,975,043)	L3 x L4
	II. Net Operating Income						
6	Interest Synchronization Adjustment to Income Tax Expense	$ (95,355,445)	$ (28,261,140)	$ (2,133,205)	$ (2,099,434)	$ (127,849,224)	
7	Weighted cost of debt Per OPC	1.53%	1.53%	1.53%	1.53%		B
8	Interest Expense	$ 1,461,671	$ 433,205	$ 32,699	$ 32,182	$ 1,959,757	L6 x L7
9	Combined Federal and State Statutory Tax Rate	25.345%	25.345%	25.345%	25.345%		D
10	Income Tax Impact	$ 370,461	$ 109,796	$ 8,288	$ 8,157	$ 496,702	L8 x L9
11	OPC Gross Revenue Conversion Factor	1.34941	1.34941	1.34941	1.34941		C
12	Revenue Requirement Impact of Interest Synchronization	$ 499,902	$ 148,159	$ 11,184	$ 11,007	$ 670,252	L10 X L11
	III. Summary						
13	Revenue Requirement Impact on Rate Base	$ (6,693,972)	$ (1,983,938)	$ (149,752)	$ (147,381)	$ (8,975,043)	Line 5
14	Revenue Requirement Impact of Interest Synchronization	$ 499,902	$ 148,159	$ 11,184	$ 11,007	$ 670,252	Line 12
15	Combined Revenue Requirement Impact	$ (6,194,070)	$ (1,835,779)	$ (138,568)	$ (136,374)	$ (8,304,791)	L13 + L14

Notes and Hearing Record Source

A: Amounts from MFR Schedule G1-4a (Hearing Exhibit 123) from FPUC's filing and the response to OPC Interrogatory 159 (Hearing Exhibit 117)

B: Exhibit RCS-2R, Schedule D (Hearing Exhibit 64)

C: Exhibit RCS-2R, Schedule A-1 (Hearing Exhibit 64)

D: MFR Schedule G-6, page 4 of 4 (Hearing Exhibit 123)

EXHIBIT 1

OPC Post Hearing Brief Exhibit 1; Issue 23 Adjustment
Reverse Company Adjustment to Remove Accounts Payable to Associated Companies from Rate Base (Using Company Capital Costs)

Projected Test Year Ended December 31, 2023

Line No.	Description	FPUC (A)	Florida Division of Chesapeake Utilities Corporation (B)	Indiantown (C)	Ft. Meade (D)	Total Company (E)	Reference
	I. Rate Base						
1	Accounts Payable to Associated Companies	$ (95,355,445)	$ (28,261,140)	$ (2,133,205)	$ (2,099,434)	$ (127,849,224)	A
2	FPUC Proposed Rate of Return	6.43%	6.43%	6.43%	6.43%		B
3	Operating Income Required for Rate of Return	$ (6,131,355)	$ (1,817,191)	$ (137,165)	$ (134,994)	$ (8,220,705)	L1 x L2
4	FPUC Gross Revenue Conversion Factor	1.34941	1.34941	1.34941	1.34941		C
5	Revenue Requirement Impact on Rate Base	$ (8,273,685)	$ (2,452,128)	$ (185,091)	$ (182,162)	$ (11,093,066)	L3 x L4
	II. Net Operating Income						
6	Interest Synchronization Adjustment to Income Tax Expense	$ (95,355,445)	$ (28,261,140)	$ (2,133,205)	$ (2,099,434)	$ (127,849,224)	
7	Weighted cost of debt Per FPUC	1.35%	1.35%	1.35%	1.35%		B
8	Interest Expense	$ 1,287,299	$ 381,525	$ 28,798	$ 28,342	$ 1,725,964	L6 x L7
9	Combined Federal and State Statutory Tax Rate	25.345%	25.345%	25.345% #	25.345%		D
10	Income Tax Impact	$ 326,266	$ 96,698	$ 7,299	$ 7,183	$ 437,446	L8 x L9
11	FPUC Gross Revenue Conversion Factor	1.34941	1.34941	1.34941	1.34941		C
12	Revenue Requirement Impact of Interest Synchronization	$ 440,265	$ 130,485	$ 9,849	$ 9,693	$ 590,292	L10 x L11
	III. Summary						
13	Revenue Requirement Impact on Rate Base	$ (8,273,685)	$ (2,452,128)	$ (185,091)	$ (182,162)	$ (11,093,066)	Line 5
14	Revenue Requirement Impact of Interest Synchronization	$ 440,265	$ 130,485	$ 9,849	$ 9,693	$ 590,292	Line 12
15	Combined Revenue Requirement Impact	$ (7,833,420)	$ (2,321,643)	$ (175,242)	$ (172,469)	$ (10,502,774)	L13 + L14

Notes and Hearing Record Source

A: Amounts from MFR Schedule G1-4a (Hearing Exhibit 123) from FPUC's filing and the response to OPC Interrogatory 159 (Hearing Exhibit 117)
B: MFR Schedule G-3, page 2 of 11 (Hearing Exhibit 123)
C: MFR Schedule G-4 Consolidated (Hearing Exhibit 123)
D: MFR Schedule G-6, page 4 of 4 (Hearing Exhibit 123)

CERTIFICATE OF SERVICE
DOCKET NO. 20220067-GU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 2nd day of December, 2022, to the following:

Florida Public Utilities Company
Mr. Mike Cassel
208 Wildlight Ave.
Yulee FL 32097
mcassel@fpuc.com

Gunster Law Firm
Beth Keating
215 South Monroe Street, Suite 601
Tallahassee FL 32301
bkeating@gunster.com

Jennifer Crawford
Ryan Sandy
2540 Shumard Oak Blvd.
Tallahassee, FL 32399
jcrawfor@psc.state.fl.us
rsandy@psc.state.fl.us

Jon C. Moyle, Jr./Karen A. Putnal
c/o Moyle Law Firm
118 North Gadsden Street
Tallahassee FL 32301
jmoyle@moylelaw.com
kputnal@moylelaw.com
mqualls@moylelaw.com

/s/ Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Christensen.Patty@leg.state.fl.us